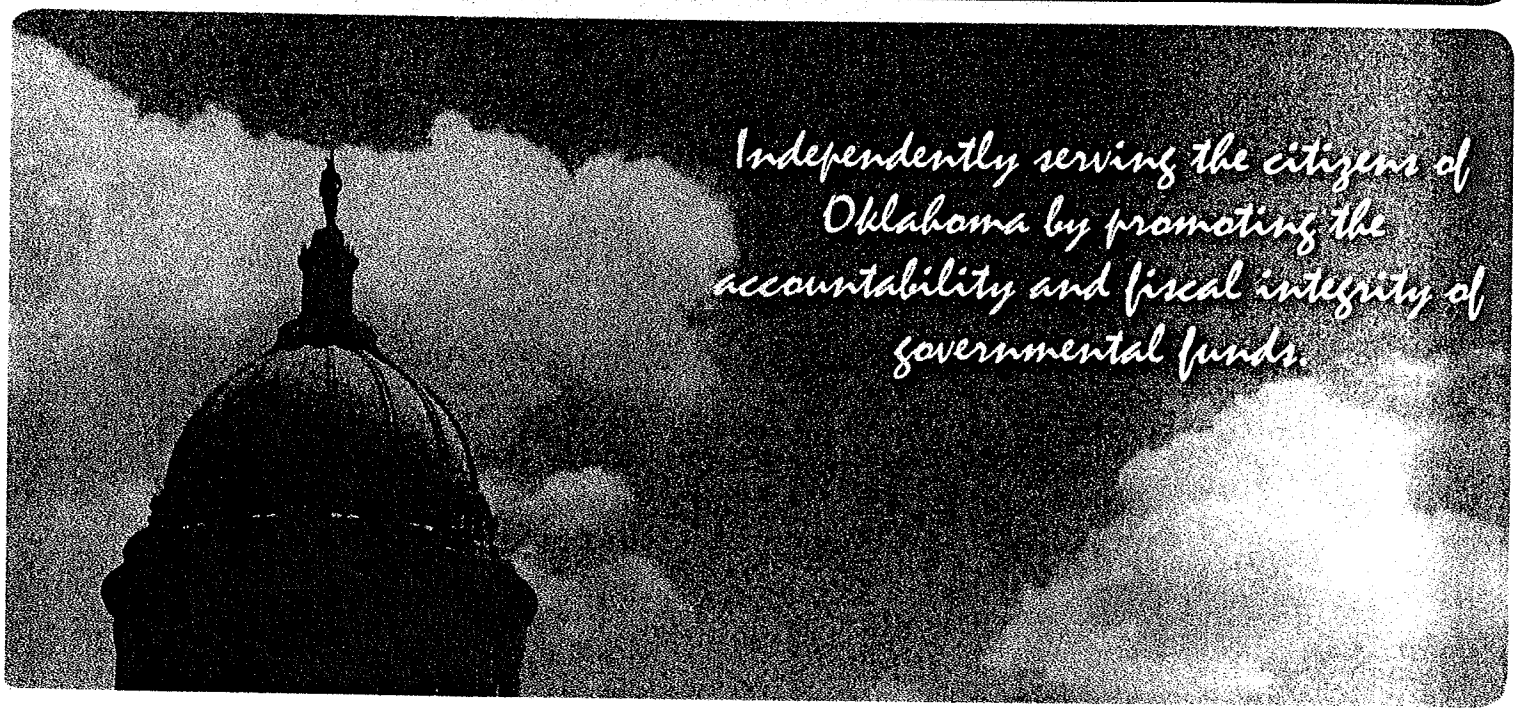
COPY

SPECIAL AUDIT

BROKEN ARROW PUBLIC SCHOOL DISTRICT

(ATTORNEY GENERAL COPY)

Fiscal year July 1, 2006 through March 31, 2009

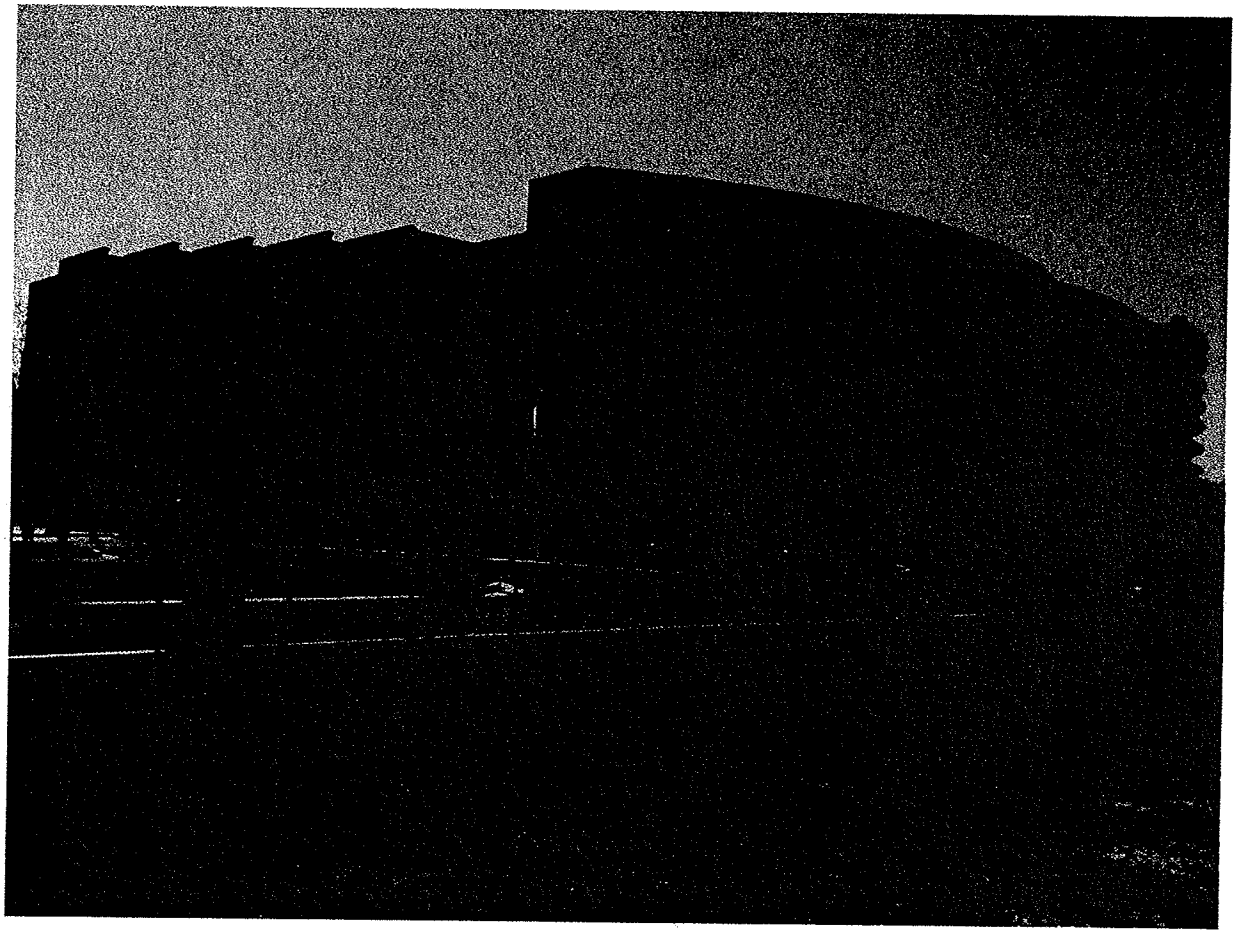


Oklahoma State
Auditor & Inspector
Gary A. Jones, CPA, CFE

BROKEN ARROW PUBLIC SCHOOL DISTRICT

SPECIAL AUDIT REPORT

JULY 1, 2006 THROUGH MARCH 31, 2009



Broken Arrow Public School District Administration Building

This report has been prepared at the request of the Attorney General of Oklahoma. Pursuant to **74 O.S. 2001, § 18f**, the Attorney General may request audit services from the Oklahoma State Auditor and Inspector to assist in any cases to be tried or in any matters to be investigated. Consequently, this document is ***not*** a public document, but is part of the investigation and/or litigation files of the Attorney General and therefore may be kept confidential pursuant to the **Oklahoma Open Records Act**, in accordance with **51 O.S. 2001, § 24A.12.**

Oklahoma State Auditor & Inspector

2300 N. Lincoln Blvd. • State Capitol, Room 100 • Oklahoma City, OK 73105 • Phone: 405.521.3495 • Fax: 405.521.3426

June 7, 2011

Honorable E. Scott Pruitt
Oklahoma Attorney General
313 N.E. 21st Street
Oklahoma City, OK 73105

Transmitted herewith is the special audit report of the Broken Arrow Public School District.

Pursuant to the Attorney General request and in accordance with the requirements of **74 O.S. 2001, § 18f**, we performed a special audit with respect to the Broken Arrow Public School District for the period July 1, 2006 through March 31, 2009.

The objectives of our special audit primarily included, but were not limited to, the areas noted in the Attorney General request. Our findings and recommendations related to these procedures are presented in the accompanying report.

Because the above procedures do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on the account balances or financial statements of the Broken Arrow Public School District for the period July 1, 2006 through March 31, 2009.

A report of this type tends to be critical in nature. Failure to report commendable features in the accounting and operating procedures of the entity should not be interpreted to mean that they do not exist.

The Office of the State Auditor and Inspector is committed to serve the public interest by providing independent oversight and by issuing reports that serve as a management tool to the State. Our goal is to insure a government, which is accountable to the people of the State of Oklahoma.

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during the course of our special audit.

Sincerely,

GARY A. JONES, CPA, CFE
OKLAHOMA STATE AUDITOR & INSPECTOR

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BOARD OF EDUCATION
AS OF MARCH 31, 2009

Terry Stover ..... President

Sharon Whelpley ..... Vice-President

Stephanie Updike ..... Clerk

Maryanne Flippo ..... Deputy Clerk

Shari Wilkins ..... Member

SUPERINTENDENTS

Dr. Jim Sisney
July 1, 2003 through October 23, 2008

Dr. Gary Gerber
October 23, 2008 through June 30, 2010

Dr. Jarod Mendenhall
July 1, 2010 to Current

EXECUTIVE SUMMARY

We performed a special audit pursuant to an Attorney General request and in accordance with the requirements of **74 O.S. 2001, § 18f.** Except as otherwise specified, this report addresses issues in the Broken Arrow Public School District for the period July 1, 2006 through March 31, 2009. Some information, both prior and after the audit period, is presented as necessary to complete the information developed for certain objectives.

This report covers 18 objectives categorized as follows:

- *Objectives related to the Open Meeting Act.*
- *Objectives related to potential conflicts of interest.*
- *Objectives related to the Public Competitive Bidding Act.*
- *Objectives related to the District's long term HVAC contractor.*
- *Objectives related to three other matters.*

We determined the first objective to be a possible violation of the Open Meeting Act and referred the matter to the Attorney General for legal review and evaluation. We determined the second objective to *not* be an Open Meeting violation based on the information developed.

We determined the first conflict of interest objective to be a possible violation and conflict and referred the matter to the Attorney General for legal review and evaluation. The remaining alleged conflicts were determined to *not* be conflicts, based on the information developed.

We determined there were Public Competitive Bidding Act violations, which we report were the result of failures to timely update policies and procedures with legislative changes to the Act, and other factors including miscommunication, and misinterpretation and/or misapplication of the provisions of the Act. The violations did *not* appear to be intentional, based on the information developed during our audit.

Seven objectives in this report relate to the District's long-term heating, ventilation, and air conditioning (HVAC) contractor. The objectives in this section were included to address issues concerning various allegations, including allegations of criminal conduct, reported in a prior unsigned draft report and an unauthorized document leaked to the media by party or parties unknown. Information developed for this report refutes the allegations, particularly the allegations of criminal conduct.

Three additional objectives were reported under "other matters." The first was an allegation of a "false and fictitious" invoice or claim for the District's fleet insurance coverage that information developed for this report indicated was completely erroneous. The second matter was related to various stipends for certain administrative staff that had been approved by a former superintendent. The information developed for this matter led to a more generalized finding that there was documentation for Board approval for ONLY the annual teachers' agreement, but no other category of staff. The third objective involved allegations of a District official shredding documents, for which we determined the evidence to be inconclusive.

Recommendations were made for some of the above objectives, but not others.

INTRODUCTION

The Broken Arrow Public School District ("District") is an independent school district as described in 70 O.S. § 1-101 *et seq.,* the Oklahoma School Code.

The Board of Education of the District (Board) is responsible for the supervision, management, and control of the District as provided by 70 O.S. § 5-117.

Both the Board and the District are subject to the provisions of the Oklahoma School Code, as well as other statutes found in various titles including, but not limited to, Title 25 (Definitions and General Provisions), Title 51 (Officers), Title 61 (Public Buildings and Public Works), Title 62 (Public Finance), and Title 68 (Revenue and Taxation).

The District is audited annually by private independent auditors and such audit reports were available for our review.

In April 2009, the Office of State Auditor and Inspector (OSAI) entered into an agreement with the District to conduct a special audit of the District. The OSAI conducted audit fieldwork, and a draft report of the audit was prepared, but no official report was ever issued. Subsequent to an August 18, 2010, "exit" conference at the District, an unauthorized document purporting to be a "draft report" was released to the public via the Internet.

Said document contained allegations against members of the Broken Arrow community and school district which, if true, constituted serious violations of state and federal law. However, if found to be incorrect or unsubstantiated, those same accusations could cause harm to those individuals and businesses. The Attorney General requested an audit authorized by 74 O.S. 2001, § 18f to either confirm or refute those allegations.

In the following report, there will be frequent references to the two documents described above. In order to distinguish between those two documents, the designation "early, unsigned draft report" refers to an April 2010 draft of the *Board requested audit report.* The designation "80-page unauthorized document" or "leaked, unauthorized document" refers to the document that was posted on the Internet.

All dollar amounts included in the report are rounded to the nearest dollar, unless otherwise specified.

The District's fiscal year starts July 1 and ends June 30. In this report, fiscal years are abbreviated by using the ending calendar year. For example, the fiscal year of July 1, 2010 to June 30, 2011, will be identified as "FY11."

The results of the Attorney General special audit request are in the following report.

OBJECTIVE #1: DETERMINE IF THE BOARD OF EDUCATION VIOLATED THE OPEN MEETING ACT.

BACKGROUND

One issue raised was whether or not the law firm of Rosenstein, Fist & Ringold ("RFR") had been authorized by the Board of Education to conduct an investigation of a District employee in an open meeting, or an executive session of an open meeting, in compliance with provisions of the Open Meeting Act.

FINDING

An "investigation" initiated by individual board members may be contrary to provisions of the state's 25 O.S. § 301 *et seq.* Open Meeting Act.

We obtained the meeting minutes for the Board of Education Special Meeting held on August 12, 2008. The meeting minutes reflect item II as follows:

> Discussion, consideration and vote to approve or not approve hiring Rosenstein, Fist and Ringold as legal counsel for the Broken Arrow School District and to authorize the execution of an engagement letter/contract between the District and Rosenstein, Fist and Ringold.

The Board approved hiring Rosenstein, Fist and Ringold and the engagement letter/contract.

We obtained a copy of the engagement letter/contract between the Board and RFR. The engagement letter includes the following language:

> Legal services rendered by this law firm will be on an "as needed" basis and will encompass work requested to be performed by the Superintendent, his designees and ***any member*** (singular) of the Board of Education. (emphasis added)

We contacted Attorney Doug Mann with the RFR law firm and inquired about the investigation the firm had conducted on Dr. Jim Sisney.

According to Mr. Mann, he was contacted by several board members and requested to conduct the investigation under the authority of the

engagement letter approved by the Board of Education during the special meeting on August 12, 2008. The requests reportedly came from the Board Members ***individually*** and without the knowledge of the others.

We contacted Attorney Phyllis Walta, representing Board Members Flippo, Wilkins and Whelpley, and asked that she confirm if one or more of her clients requested RFR to conduct the investigation of former Superintendent Sisney. Attorney Walta stated all three of her clients made the request under the authority of the engagement letter approved by the Board of Education on August 12, 2008.

One of the guiding principles of the Oklahoma Open Meeting Act (OMA) is that the business of public bodies, as defined in the Act, should be conducted in "open" meetings. Provisions of the OMA require sufficient advance notice be given for the "...date, time, place and agenda for said meeting..." and sufficient detail being made available to "notify" the public concerning what governing actions may be considered and/or decided at the meeting.

Other provisions permit private "executive sessions" for certain specific exceptions to the OMA, including 25 O.S. § 307(B)(4) which states:

> Confidential communications between ***a public body*** and its attorney ***concerning a pending investigation***, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of ***the public body*** to process the claim ***or conduct a pending investigation***, litigation, or proceeding in the public interest. (emphasis added)

Some public officials are tasked with *individual* duties and responsibilities, such as the Governor, the Attorney General, the local County Treasurer, etc. Other public officials have both individual and collective or group duties, such as County Commissioners, who may act individually for some duties and responsibilities, but must act collectively, when acting as the governing board of the county.

Yet other public officials, such as "boards of public and higher education," municipal "governing bodies," as well as other public entities defined in 25 O.S. § 304 (1) of the OMA, do NOT have *individual* duties or responsibilities and MUST function collectively as a group to carry out *Board* duties, responsibilities and to make governing decisions.

The wording of the RFR engagement letter, as approved by the Board, appears to "open a door" for school board members, *acting as individual members*, to obligate public funds by way of the soliciting or ordering of services, in this case an "investigation," that the District would be/was required to pay under the terms of the engagement letter.

According to the above interviews, the services performed by RFR were the result of requests by three board members *acting individually*, and not by the Board, *acting as a governing board.*

RECOMMENDATION This matter has been referred to the Office of Attorney General for legal review and evaluation and any action deemed appropriate.

OBJECTIVE #2: DETERMINE IF THE BOARD OF EDUCATION *POLICY COMMITTEE* VIOLATED THE OPEN MEETING ACT.

BACKGROUND

During an interview with former Board Member Updike, she expressed a concern that the District's "policy committee" obligated the District for legal fees related to policy revisions without proper Board approval. Former Board Member Updike believed this was possibly a violation of the Open Meeting Act.

Under the 25 O.S. § 304 (1) "definitions," it states in part:

> "Public body" means the governing bodies of all municipalities located within this state, boards of county commissioners of the counties in this state, *boards of public and higher education in this state...*, ***and shall include all committees or subcommittees of any public body.*** (emphasis added)

Based on the above definition, any committee or subcommittee of a public body, as defined in 25 O.S. § 304 (1), would require the same meeting notifications, posted agendas, open meetings and published minutes that are required of a full public body. According to an interview with District Chief Administrative Officer Dwayne Thompson, the Board had no *formal* committees or subcommittees, until the present fiscal year (FY11).

FINDING

An alleged violation of the Open Meeting Act by a "policy committee" was not a violation because a) no formal policy committee existed at the time, and b) the action alleged to be a violation was approved in a regular Board meeting.

We obtained the meeting minutes for the Board of Education's Regular Meeting held on September 15, 2008. The meeting minutes reflect consent agenda item 48 as follows:

> A motion was made by Flippo with a second by Mrs. Whelpley to authorize Rosenstein, Fist and Ringold to review the District's board policies and recommend and provide to the Board revisions to the policy manual. Mr. Mann informed the Board the he and Andrea Kunkel would be doing the review and revisions for a maximum of $5,000 and it would take 60 to 90

> days. Ms. Holmes told the Board that she and Dr. Sisney were already looking at revisions of policies and would have them effective July 1, 2009, so revisions to the Student Handbooks would not be needed before then. Motion carried by the following vote: YES: Mrs. Wilkins, Mrs. Flippo, Mrs. Whelpley NO: Mrs. Updike, Mr. Stover

The Board minutes indicate that *it was the Board,* and not a "policy committee" that contracted RFR to review and recommend policy changes.

Purchase order 2009-11-1818, dated September 19, 2008, was issued to Rosenstein, Fist and Ringold in the amount of $5,093.48. The purchase order contained the following description:

> 161/Legal services for Doug Mann and Andrea Kunkel to review the district's board policies and recommend and provide to the board revisions to the policy manual/M.Flippo

We obtained a copy of the Rosenstein, Fist and Ringold invoice for total fees for policy revisions through May 31, 2009. The invoice includes $5,000 for professional services and $93.48 for expense advances for a total of $5,093.48 for policy revisions.

Someone could observe or argue that the original motion "for a maximum of $5,000" did not specify additional incidental expenses, and that the $93.48 for Westlaw Electronic Research ($89.68) and copy charges ($3.80) could be disputed on that basis.

However, since *the Board* authorized $5,000 to be expended for policy review and revision, and the funds were appropriately encumbered on a timely basis, no other Board action was necessary.

RECOMMENDATION If "additional incidental expenses" is a common occurrence, the District should review and consider revising their procedures to more accurately encumber adequate funds.

OBJECTIVE #3: DETERMINE IF A FORMER SUPERINTENDENT RECEIVED GIFTS FROM A DISTRICT VENDOR.

BACKGROUND

In September 2008, former Superintendent Dr. Jim Sisney filed a lawsuit in the District Court of Tulsa County against the District and three District board members. One of the attorneys involved in the case issued a subpoena to Windstream Oklahoma, LLC.

Our auditors were provided with copies of records obtained in response to that subpoena. In addition, we interviewed District personnel and the District's E-Rate consultant, reviewed District records, and gathered information from "Universal Service" websites.

This objective has been divided into multiple findings, summarized as follows:

- There was a 2007 Internet services contract with Windstream signed by a former superintendent that was not approved by the Board.
- Following the discovery of the 2007 Internet services contract in early 2009, Windstream obtained an apparently noncompetitive, upgraded contract with the District.
- Concurrent with the signing of the Internet services contract in January 2007, Windstream was filing applications for significantly increased subsidies from the federally funded E-Rate program.
- Also concurrent with the signing of the Internet services contract in January 2007, the former superintendent and his brother received an all expenses paid trip to the 2007 NCAA Men's Final Four basketball tournament in Atlanta, Georgia.

FINDINGS

There was an unauthorized Internet services contract signed by a former superintendent.

In 2004, the District entered into a contract with Valor Telecom (Valor) for the purpose of providing Internet service to the District. The 2004 contract with Valor was for a term of five years, beginning in September 2004 and ending in September 2009. In 2006, Windstream Communications, Inc. (Windstream) merged with Valor Telecom.

Early in 2009, Louis Wood, Network Manager for the District, believed the original contract with Valor/Windstream was expiring. He sought competitive quotes from three Internet providers for the District's Internet service. The District received subsidies for its Internet service from E-Rate and OUSF, so Wood obtained competitive quotes to see who would provide the most bandwidth for the same amount of money, which was $6,995 per month, under the terms of the 2004 contract.

Quotes for bandwidth were submitted by three companies, TW Telecom, Cox and Windstream. According to Wood, supported by documentation obtained from the District, TW Telecom returned with the most bandwidth, 500mb. Cox provided the second best quote at 350mb and Windstream was the lowest at 300mb.

An agenda item was added for the March 9, 2009, Board of Education meeting. The agenda item was to "discuss, motion, and vote on motion to approve or disapprove proposed contract to upgrade the district's bandwidth from the current 44mb/s service to 500mbit/s. L. Wood."

According to Wood, he received a telephone call from Board Member Stephanie Updike informing him that she was going to remove the item from the agenda, because she didn't want to cause a "scene." We obtained the meeting minutes for the March 9, 2009, meeting which included Item #29:

Budget and Finance

29. Discussion, motion, and vote on motion to approve or disapprove proposed contract to upgrade the district's internet bandwidth from the current 44mb/s service to 500mbit/s. L Wood
RECOMMENDATION: Approve recommendation as presented.
Item removed. No action

The videotape of the March 9 meeting showed Board Member Updike made a motion to have items, including item #29, removed from the agenda, because the items had not appeared on the tentative agenda provided to the board members 48 hours before the actual agenda was posted.

The Board engaged in a discussion concerning the removal of the items. During the discussion, former Superintendent Gary Gerber stated that item #29 was "going to be removed from the agenda anyway" due to new

information being received. The Board approved the motion to remove item #29 from the agenda.

According to former Superintendent Gerber, he had been contacted by Windstream and informed of an existing ***2007 contract***. Gerber stated it was the first time he had heard of a 2007 contract, so he had intended to have the item pulled from the agenda to determine what legal ramifications may have existed due to the newly discovered contract.

In separate interviews, both Gerber and District Chief Administrative Officer Dwayne Thompson stated the District's board minutes had been reviewed, and District staff found nothing to indicate that a 2007 Windstream contract was approved by the Board. We reviewed meeting minutes from July 2006 through January 8, 2007, and could find no indication of a Windstream contract being approved by the Board.

According to interviews, neither Network Manager Wood, nor Accounting Director Joy Plested, could locate a copy of the 2007 contract in the District's records. Plested contacted the school's E-Rate consultant and obtained a copy of the 2007 contract from that source.

Thompson provided us with a copy of the contract from Windstream Communications, Inc., dated January 11, 2007. The contract was signed by former Superintendent Jim Sisney.

The January 2007 contract between the District and Windstream replaced the previous Valor contract (due to expire September 2009) with a new 5-year contract ending in January 2012. The new contract extended the contract period an additional 29 months beyond the original ending date of the 2004 Valor contract. At the new price of $6,491 per month, the total value of the new contract was $389,460 (60 months x $6,491).

Analysis of both the 2004 and 2007 contracts by OSAI IT audit staff determined there was a minimal or marginal potential upgrade in services for the District, with an approximate $500 reduction in monthly cost versus the approximate 29 month net extension of the term of the contract.

On March 10, 2009, following the Board meeting in which item #29 was pulled from the agenda; a Windstream employee sent an email to Network Manager Wood inquiring about the "results from last nights [sic] Board

meeting." Wood replied, "[I]t would seem you have won a second chance."

Following the discovery of the 2007 contract, Windstream obtained an apparently noncompetitive, upgraded contract with the District.

Three months after the March Board meeting, the June 29, 2009, Board meeting agenda included an item for: "Review and discussion to approve or disapprove the proposed contract to upgrade the District's internet service. L. Wood." The meeting minutes for June 29, 2009, stated the Board voted to approve the upgrade.

We reviewed the videotape for this meeting and determined there was no discussion concerning the quotes previously received from TW Telecom and Cox. The Board approved the new proposal for *600mbit/s from Windstream,* which is double the bandwidth rate Windstream had offered in its bid just three months earlier.

The 2009 contract is between Oklahoma Windstream, LLC and the District. It is another 5 year contract at a monthly cost of $6,994, nearly identical in amount to the original Valor 2004 contract. An addendum stipulates:

1. Windstream is responsible for obtaining reimbursements for E-Rate and OUSF.
2. Windstream participates in both the Federal E-Rate and State of Oklahoma OUSF program. We will apply discounts per directives from the aforementioned funding sources.
3. This agreement is for five 12 month terms and is not renewed at the end of a term. No termination charges apply.

Concurrent with the signing of the 2007 Windstream contract (not authorized by the Board), applications for that company were being filed to significantly increase the amount of E-Rate reimbursement it would receive in FY08, which started July 1, 2007.

OSAI IT audit staff researched federal websites for information on E-Rate reimbursements related to the District.

The annual E-Rate process begins with a Form 470 "*Services Requested and Certification.*" According to a Universal Service (E-Rate) website:

> The Description of Services Requested and Certification Form 470 opens the competitive bidding process for services desired by applicants that are eligible for discounts under the E-Rate program.

Following the Form 470, a Form 471 "*Services Ordered and Certification*" is filed. According to the description for Form 471:

> This form asks schools and libraries to list the eligible telecommunications-related services they have ordered and estimate the annual charges for them so that the Fund Administrator can set aside sufficient support to reimburse providers for services.

For the District's FY08, Form 470 was filed November 20, 2006, certified November 27, 2006, and had an "allowable contract date" of December 18, 2006.

The District, through its E-Rate consultant, filed two Form 471s, #544229 and #544230, totaling $1,869,895. Of the almost $1.87 million in requests for E-Rate reimbursement, 99.1% was for Windstream, with the remaining 0.9% requested for 4 other service providers.

Form 471, #544230, in an amount of $1,632,452, was apparently a request for funding of additional services and was entirely designated for Windstream. Ultimately, most (87.4%) of the funding requested was denied. None of Form 471, #544230 was approved for funding. E-Rate approved funding for $235,542 and disbursed $224,771 for FY08, according to the website: http://www.sl.universalservice.org/menu.asp.

(An unofficial site www.ErateExchange.com is easier to navigate.)

Also, according to the Universal Service website, in the prior FY07, three Form 471s were filed requesting reimbursement (subsidy) of $310,038, of which $222,243 was approved and ultimately disbursed for the benefit of the District. The two funding requests filed for FY08 represented a *six-fold increase over the previous year* ($1,869,895 / $310,038 = 6.03).

We interviewed the District's E-Rate consultant. According to Jane Kellogg:

- The Federal Communications Commission (FCC) E-Rate application process is bureaucratic and complex.
- New contracts are not uncommon in the E-Rate program, due to the necessity of minimizing any potential mistakes or mismatches between the numbers identifying the school district, the telecommunications provider, and the various forms and applications for services.
- It is probable that Windstream was using the new (2007) contract, in part, to switch the District from Valor's service provider identification number (SPIN#) to Windstream's SPIN#.
- Application 471 #544230 was for "priority #2" funding which is for goods and services, such as routers, servers, switches, telephone systems and installation *inside* the school buildings.
- E-Rate would potentially pay for priority #2 upgrades, but only after all priority #1 funding had been assured, and only to the extent that the District qualified for the funding relative to the rated and qualified needs of other school districts nationwide, which were also applying for priority #2 funding.

Besides being rejected in its entirety, Form 471 #544230 was notable, in that none of the District's requests for E-Rate reimbursement to Windstream, or other providers, have approached the $1.63 million applied for, either before or since.

Also, concurrent with the signing of the 2007 Windstream contract (not authorized by the Board) and the filing for a six-fold increase in E-Rate reimbursement, a former superintendent accepted an all expenses paid trip to the 2007 NCAA Men's Final Four basketball tournament in Georgia.

The records subpoenaed included a "Form of Statement of Work" that appears to be a contract between Windstream and an unnamed contractor providing for services related to *"2007 Executive Customer Event NBA Final Four"* [sic], actually a reference to the 2007 *NCAA* Men's Final Four basketball tournament.

The "Statement of Work" included a section titled "Services break down," which listed:

- Air transportation...Estimated @ $500 per person.
- Ground transportation.
- Welcome gifts.
- Hotel selection coordination.
- Celebrity guest or motivational speaker selection.
- On-site hospitality coordination.
- Food & beverage (including alcoholic beverages) planning.
- Souvenir gift & memorabilia selection.
- Event ticket sourcing.
- Complete on-site management.
- Entertainment, Décor & A/V arrangements.
- Hotel room reservations (Grand Hyatt Atlanta in Buckhead), for 28 Windstream executives and guests for double occupancy.

The "event ticket sourcing" was for the 2007 NCAA Men's Final Four basketball tournament. The statement of work states the total "package price" for these services, as well as others, to be $200,000, not including the air transportation estimated at $500 per person above. Based on the "20" participants, and 8 Windstream "executives" (with guests, 56 persons in all), the package appears to have cost $3,571 per person, plus an unknown amount for air fare.

Included with the Statement of Work was an undated document titled "***Customers*** that are Attending the Final Four" (emphasis added), which listed 20 participants and their guests. The listing included, under the heading "company" the name Broken Arrow Schools. The guests associated with Broken Arrow Schools were "Dr. Jim Sisney" and "Lee Sisney (Brother)."

The Statement of Work included a clause for the period of performance to be between December 18, 2006, and April 10, 2007. The "ground transportation" service included a date range from March 30 to April 3. The 2007 NCAA Men's semi-final games were held on March 31. The final game was held on April 2, 2007. The semi-finals and championship games were played in the Georgia Dome in Atlanta, Georgia.

We were provided with an email also obtained as a result of the court filings. The email reportedly came from a computer forensics

examination performed on the school computer used by former Superintendent Sisney. The May 11, 2007, email states:

From: Lee Sisney [Lee@tktandassociates.com]
Sent: Friday, May 11, 2007 7:45 AM
To: Sisney, Jim
Cc: Raney, Wendy; Sherleen Sisney
Subject: 2008 Kentucky Derby

Jim,

It was great having you and your family at Shara and John's wedding. Sorry I was sick, but I did get through it standing up.Stan and Kathy really enjoyed being seated with you and Jennie. Stan was fascinated with what you are doing in education. He told Sherleen he didn't know where you came from. We don't either. Anyway the real purpose of this email is to invite you and Jennie to the Derby next year. Think about it and let me know. I have reserved tickets for Grant and Wendy Raney, who helped host us for Windstream at the Final Four. If you recall, we were seated next to them at the Cheese Factory lunch and on the bus on more than one occasion. Think about it, and I will call you all over the weekend.

With love, admiration, and respect,
Lee

The email includes a reference to "Grant and Wendy Raney, who helped host us for Windstream at the Final Four." We obtained a listing of executives for Valor/Windstream that identified Grant and Wendy Raney as the Senior Vice-President of Operations and Director of Purchasing, respectively.

The 2007 contract with Windstream was signed by Dr. Sisney, and Robert Whitlock, representing Windstream. We interviewed Mr. Whitlock, who told us he had been given tickets to the 2007 NCAA Men's Final Four basketball tournament by his supervisor, Ed Bryson, and was told to deliver the tickets to Dr. Sisney. Whitlock said that he could not recall if he gave the tickets directly to Sisney or left them with a secretary.

The above circumstances appear contrary to provisions of the Anti-Kickback Act of 1974, 74 O.S. § 3401 *et seq,* and to 21 O.S. § 381 and § 382, related to "bribery and corruption."

During a February 16, 2011, interview with the former superintendent, Dr. Sisney stated Wes Smithwick was the person that really handled the negotiations with Windstream. We interviewed Mr. Smithwick who stated that he did not handle the negotiations with Windstream, and had merely served to guide the District in matters related to the E-Rate process because of his background in communications.

During the same interview with Dr. Sisney, he stated that he received the NCAA tickets from Windstream employee Ed Bryson, that Bryson is a personal friend, and that he and his brother did attend the event. Also, according to Dr. Sisney, the NCAA tickets were intended for Bryson and

his wife. Dr. Sisney stated he only received the tickets, because the Brysons were unable to attend the event.

In addition to Internet services, Windstream also provided the District's telephone service and fiber line leasing in FY07. According to District records, total *District* payments (not including E-Rate or OUSF subsidies) to Windstream for FY07 amounted to $335,680. The FY07 time period included both the unauthorized January 2007 contract signing by Dr. Sisney and the 2007 NCAA Final Four trip sponsored by Windstream.

Timeline and summary:

November 20, 2006	The District's Form 470 for the fiscal year 2007-08 was filed. The District certification date on Form 470 was "11/27/06." The "allowable contract date" was "12/18/06."
December 18, 2006	Contract for "Statement of Work" between Windstream and an unidentified contractor. An undated customer list reflects "Broken Arrow Schools;" "Dr. Jim Sisney;" "Lee Sisney (Brother)."
January 11, 2007	A new 5-year contract between the District and Windstream was signed by Dr. Jim Sisney.
	Board minutes reflected no Board authorization for a new Windstream contract to replace the Valor contract.
	The District Network Manager and other District administrators were unaware of the new contract until March 2009.
January 27, 2007	Electronic signature date for Form 471 #544230, requesting a $1,632,452 increase for "priority #2" new services and funding, filed with the Federal Communications Commission.
February 5, 2007	Electronic signature date for Form 471 #544229 requesting the "priority #1" services normally provided annually, both before and since, filed with the Federal Communications Commission.
March 30 to April 3, 2007	Windstream provides an all expense paid event for "customers" to the 2007 Men's NCAA Final Four basketball tournament held in Atlanta, Georgia. Dr. Sisney and his brother attend.

RECOMMENDATION This matter has been referred to the Office of Attorney General for legal evaluation and any action deemed appropriate.

OBJECTIVE #4: DETERMINE IF CERTAIN BOARD MEMBERS HAD VARIOUS CONFLICTS OF INTEREST WITH A DISTRICT VENDOR.

BACKGROUND

Concerns were raised about possible conflicts of interest between District Board members and Air Assurance which we will address individually. These concerns came from a variety of sources, including an early unsigned draft report version, a former Air Assurance employee and an anonymous blogger, and included an allegation of free HVAC services provided to Board members by Air Assurance.

FINDINGS

An alleged conflict of interest involving a board member's *employer* selling insurance coverage to a District vendor was not a conflict for two reasons: 1) no such policy or coverage ever existed, and 2) even if there was a policy, the transaction would have been between two private sector entities, with no involvement by the District or any Board member.

The first concern related to Board Member Shari Wilkins having worked for a company that had possibly sold insurance to Air Assurance. The early unsigned report version states, in relevant parts:

> Ms. Wilkins reportedly asked Ms. (Carol) Yates if she thought it would be a conflict of interest for her to meet with Mr. Rampey in that the insurance company she worked for through one of her colleagues, Jeremy Fairchild, was in the process of presenting an insurance packet for Air Assurance...
>
> OSAI spoke with Ms. Wilkins who stated that she had worked for a benefits insurance company, but that she was never involved with preparing any insurance packet for Air Assurance.

We also spoke with Ms. Wilkins who stated she had worked for Plan Benefits Analysts of Tulsa (PBA), until September 1, 2009. She was "a licensed health agent" in the area of corporate benefits, and that she made sales calls to businesses. However, while working for PBA, she had not made any calls on Air Assurance, and Air Assurance was never a client. Her statements were confirmed through contacting PBA directly.

Title 62 O.S. § 371 (A) states, in part:

> Except as otherwise provided in this section...nor any district board of any school district in this state...shall make any contract with any of its members, or *in which any of its members shall be directly or indirectly interested.* All contracts made in violation of this section shall be wholly void. (emphasis added)

Apparently, the concern was whether a transaction or potential transaction between Air Assurance and the employer of Ms. Wilkins would somehow qualify as being an "indirectly interested" situation for Ms. Wilkins. The above statute addresses contracts between the Board/District and the members of the Board, or businesses owned by the members of the Board.

Any transaction between Air Assurance and Plan Benefits Analysts of Tulsa would have been a private sector transaction. It would not have involved the District or any member(s) of the Board and, consequently, would not have been a conflict of interest.

An alleged conflict of interest concerned the purchase of cruise tickets for an Air Assurance employee incentive program. However, according to information provided by the travel agency, no tickets were ever purchased through the program, and there was never any involvement of a District Board member in any way.

The second conflict of interest issue was an allegation made by a former employee of Air Assurance.

We contacted the former employee who said that, sometime around April 2008, Air Assurance was offering an incentive program in which anyone who recommended a licensed heating and air technician to Air Assurance, and if the technician was subsequently hired by Air Assurance, would receive tickets for a cruise.

According to the former employee, the cruise tickets were being purchased by Air Assurance from a person she believed to be a District board member. The former employee was unable to provide a name of the suspected board member, but she said it was a female in her late 20s to early 30s, and the person had come to the Air Assurance office in April 2008.

We contacted Air Assurance and asked about the incentive program and the name of the travel agent they had dealt with. Air Assurance provided emails indicating the travel agent they used was Gayla Smith, employed by Spears Travel Agency. One of the emails provided was dated in April, 2008.

We met with Gayla Smith who is still employed with Spears Travel Agency. Smith appears to fit the physical description provided by the former employee. Smith confirmed, that in the spring of 2008, she went to the Air Assurance company offices and met with them concerning the incentive program and had discussed cruise tickets. Smith said they have not sold any cruise tickets to Air Assurance.

Smith stated she is not now and never has been a Board member for the District.

A third conflict of interest allegation claimed Air Assurance was performing work for Board members, free of charge (or something to that effect). Interviews and documentation supplied by Air Assurance indicated any business done with District board members occurred *after* the company withdrew from its District contract.

We asked Air Assurance to provide all records related to any work performed for the following board members: Stover, Updike, Whelpley, Wilkins and Flippo.

Air Assurance indicated they have not performed any work for Terry Stover or Stephanie Updike.

They have performed work for Sharon Whelpley, beginning in July 2009.

They submitted a maintenance contract proposal to Shari Wilkins in October 2009.

Air Assurance has had a commercial service contract with Flippo Insurance since June 2008.

Air Assurance formally withdrew its services from the District, as of May 8, 2008. Based on our test work related to Air Assurance, the company actually quit providing services to the District in March 2008, so the above work occurred *after* Air Assurance was no longer a District vendor.

The above situations were not conflicts, and there was no substantiation for any board member having received free HVAC services from Air Assurance.

RECOMMENDATION No recommendation is provided for the above findings.

OBJECTIVE #5: DETERMINE IF A DISTRICT OFFICIAL WAS OFFERED A "BRIBE" BY A DISTRICT VENDOR.

BACKGROUND

The following quote is from an early, unsigned draft report version:

> "Jim Moburg, Executive Director of Construction Services, stated Dr. Gerber, who was over BAPS Operations, came to him and was very nervous and upset saying that Mr. Rampey, owner of Air Assurance, had come and talked to Gerber and stated if he (Air Assurance) didn't get the school's work he would have to lay off 50% of his employees. Dr. Gerber reportedly stated Rampey said, "What can I do to get the bid?" Dr. Gerber told Mr. Moburg he thought he'd just been offered a bribe. Gerber stated Rampey gave 10% of their gross earned back to the school."

FINDING

An alleged "bribe" or "bribe attempt" was based on conflicting accounts of conversations and unsubstantiated hearsay.

The above description of an alleged bribe attempt was a confusing paragraph. It reportedly quotes Jim Moburg, who is allegedly quoting Dr. Gerber, who in turn is allegedly quoting Mike Rampey (Air Assurance owner) saying or asking something like "What can I do to get the bid?"

Apart from being a textbook "hearsay" allegation, the supposed attempt at a bribe could be interpreted as a prelude to some type of bribe attempt, or it could be a common sales/marketing pitch to solicit more information from a potential customer, in order to make or modify a proposal to suit the customer's needs. What happens after the above question is asked may determine whether it is simply marketing or an attempt at bribery.

The above quote is followed up by another shorter account of a second alleged conversation between Moburg and Gerber:

> "The next day Moburg asked Gerber what happened with the problem with Rampey and how it worked out and he said Gerber was very calm and said "Rampey came in as low bidder" and that Bill Miller had "worked out a deal and they lowered the amount."

The two quotes came toward the end of a sometimes partially self-contradicting section of the early unsigned draft report. The original interview memo between Moburg, an OSBI agent and an OSAI auditor, connects the conversation to "bids on preventive maintenance." In the interview memo from July 2009, Moburg recalled that the conversation with Gerber occurred "in 2005."

The use of the term "bids" in the interview memo does not refer to a formal sealed bid process, but an informal unsealed verbal or written "quote" process that was in place for FY07 and prior years. In 2005, the District purchasing office was apparently unaware that the District was required to formally bid "preventive maintenance" contracts, as described in Objective #6.

In a March 2011 phone interview with Mr. Moburg, he reaffirmed portions of his earlier interview, in that he could recall a conversation in which Dr. Gerber reportedly:

- was upset or disturbed;
- had mentioned the source of his disturbance was some comment from Rampey that Dr. Gerber interpreted as a bribe attempt;
- had a second conversation with Moburg the following day;
- stated the following day that there was "no issue" or what had happened the prior day was "not an issue;"
- stated that Bill (Miller) "had worked out a deal;" and,
- stated that Rampey "would have gotten the bid anyway."

During our February 2011 interview with former Superintendent Sisney, he reiterated an account of the above conversation(s), stating he (Sisney) had been told by Dr. Brian Beagles, who had been told by Jim Moburg, who had been told by Dr. Gary Gerber that he (Gerber) felt like Mike Rampey had offered him a bribe.

We interviewed Dr. Gerber who stated he does not recall having such a conversation with Mike Rampey. Other interviews indicated that to the extent there was any type of preventive maintenance quote "in 2005," the process would have been informal and administered by Mark Bilby, purchasing director, and Bill Miller, maintenance director, and ***not*** by Dr. Gerber.

We interviewed Rampey about the alleged potential loss of "50%" of his employees, if he had "lost" the preventive maintenance contract in 2005. Rampey stated there was no truth to the claim because, at the time he ceased doing work for the District (early 2008), the District's work represented only about 7% of Air Assurance's business.

We noted that Air Assurance has tried incentive programs (see Objective #4 above), and continues to have, an incentive program in an effort to hire qualified technicians. This led to the observation that the loss of the District's business in 2008 did not appear to have a severe impact on the company.

In any case, the above accounts and reported conversations are conflicting at best, unsubstantiated "hearsay" at worst. It is unreasonable to believe that *offering the District* a reported discount of "10% of the gross" (if such actually occurred) is somehow a "bribe" or "attempted bribe" to Dr. Gerber.

RECOMMENDATION No recommendation is provided for the above finding.

OBJECTIVE #6: DETERMINE IF THE DISTRICT VIOLATED THE PUBLIC COMPETITIVE BIDDING ACT WITH REGARD TO ITS HVAC PREVENTIVE MAINTENANCE PURCHASES.

BACKGROUND

Title 61 O.S. § 101, *et seq*, the Public Competitive Bidding Act of 1974 (PCBA), applies to school districts and has been amended numerous times since the original statute. Currently, the wording in 61 O.S. § 102 (6) defines "public construction contract" as:

> ""Public construction contract" or "contract" means any contract, exceeding Fifty Thousand Dollars ($50,000.00) in amount, awarded by any public agency for the purpose of making any public improvements or constructing any public building or making repairs to ***or performing maintenance on*** the same..." (emphasis added)

In the 2000 legislative session, Senate Bill 1172, c. 363, § 8, added the four words ***"or performing maintenance on"*** to 61 O.S. § 102 (6). Previously, the above quoted section ended with "any public building or making repairs to the same..." The change became effective on June 6, 2000. SB 1172 also doubled the bid threshold from $12,500 to $25,000.

Air Assurance, a local HVAC contractor, had a long-standing working relationship with the District dating back to the mid 1990s. During fiscal year 2006-07, controversy arose related to the use of Air Assurance for HVAC preventive maintenance without a *formal* bid or quote process.

FINDING

Following the 2000 legislative change to the Public Competitive Bidding Act, the District was not in compliance for a period of approximately seven years, with regard to its HVAC preventive maintenance expenditures.

In an interview with Mark Bilby, the District's Director of Purchasing, he indicated that he had administered the informal quote process and said the District had not been aware, at that time, that preventive maintenance was included in the PCBA, and consequently was required to be formally bid. As a result of the oversight, the District had not published any notice to bidders nor had the District executed a contract, as required by the PCBA.

From the above, the District had already established an ongoing relationship, based on an informal quote process, for "preventive maintenance" with Air Assurance. That relationship and understanding was in effect approximately five years prior to the statutory change which added the words "or preventive maintenance on" to the definition of "public construction contract."

Following the statute change in June 2000, the District became noncompliant with the PCBA for a period of nearly seven years. Unaware of the statutory change, the District continued to operate "as usual" until the controversy in FY07 brought the issue to light.

On April 27, 2007, the district obtained written quotes for an HVAC preventative maintenance contract for the next fiscal year. Air Assurance was the successful HVAC vendor, with a "quote" of $152,879 for a contract covering FY08.

Although a step in the right direction, the use of "written quotes" still did not fully comply with the PCBA which required both "open competitive bidding" and "sealed bids." An agreed-upon-procedures report by Wilson, Dotson & Associates, PLLC, dated January 26, 2009, made the same comment in that it reported "strict compliance with the Act did not occur..." in the bid process for the preventive maintenance contract for FY08.

The controversy continued, even after the District changed its policy to bidding "preventive maintenance" services. Air Assurance eventually withdrew its services and terminated its contract with the District in the spring of 2008.

RECOMMENDATIONS Although HVAC services are now performed by District employees, we recommend the District:

1. Review its other purchasing policies and procedures and consult with legal counsel, if necessary, to determine if other areas may exist in which the District may be overlooking statutory requirements; and

2. Institute periodic training for its purchasing department staff to ensure compliance with purchasing and bidding requirements. The Oklahoma Department of Central Services has a program for certified procurement officer (CPO) training, which the District might consider for its training needs.

OBJECTIVE #7: DETERMINE IF THE DISTRICT VIOLATED THE PUBLIC COMPETITIVE BIDDING ACT WITH REGARD TO OTHER PROJECTS.

BACKGROUND

Following the finding of the failure to bid HVAC preventive maintenance purchases, the early unsigned draft report proceeded to describe several instances of "split" projects and/or "split" purchase orders that the District allegedly used to avoid the bid requirements of the PCBA. The early unsigned draft report goes on to describe in more detail four instances of the alleged order splitting.

Three of the four instances were prior to the scope of that previous audit engagement and this report (pre-July 1, 2006). Of those three instances, the largest was for the Alternative Academy project in the amount of $64,219 in FY06.

The fourth example given was in FY07, which was within the scope of this report. The project replaced two 10-ton units on Building F (cafeteria) at the high school site. The total project cost reported was $25,225.

The Broken Arrow Public School District has been a rapidly growing suburban school district for many years. We asked for the number of new construction and remodeling projects that were bid by the District in FY05, FY06, and FY07. The District Chief Administrative Officer supplied a spreadsheet that indicated the following:

Fiscal Year	Bids Awarded	Total Awarded	Bids Rejected	Total Rejected
FY05	8	$11,219,576	0	$0
FY06	14	$3,836,553	2	$187,262
FY07	5	$19,900,699	0	$0

FINDINGS

Of the 3 projects that were prior to our audit period, and reported to be "order splitting," the largest *had been bid* in late 2005.

Contrary to the early unsigned draft report that indicated the Alternative Academy had not been bid, the project was in fact one of the two FY06 bids rejected.

Although this project occurred prior to our audit scope, we have included it in this report due to the previous early unsigned draft report containing specific references alleging District officials knowingly disregarded the Act.

The early unsigned draft report, with regard to the Alternative Academy project, states in part:

> This email communication from Miller to Dr. Gerber confirms the cost estimate of the project excludes expenses associated with the competitive bidding process. Despite the project costs, BAPS did not put the project out for bid.
>
> Former Purchasing Director Linda Brown told SAI she was aware of the $25,000 competitive bidding requirement. Nevertheless, Brown submitted the request for separate purchase orders splitting the project and Dr. Gerber approved the request.
>
> No bids were solicited or quotes obtained for this project.

As mentioned above, the Alternative Academy project ***was bid, but the bids were rejected.*** A publisher's affidavit indicates publication of the Notice to Bidders had been published on November 21 and 28, 2005, in accordance with the PCBA. On December 20, 2005, the bids were opened. The two bids received were for $175,180 and $147,500 from Lassiter Richey and Magnum Construction, respectively.

An interview with the project manager, who worked for the engineering firm at the time, indicated the estimate for the project had been approximately $80,000. Documentation from the District reflected a recommendation that the bids be rejected because they were "84% higher than estimated and over our budget."

The meeting minutes for the District's Board meeting held on January 9, 2006, reflected the Board of Education's approval to reject the bids. We noted that the timing of the bid occurred near the peak of the recent nationwide real estate "bubble" in prices and in construction, which may partially account for the unexpectedly "high" bids.

The former project manager told us that since the bids had come in substantially higher than the projected cost, the District ultimately did the project itself, saving a substantial amount of money. In effect, the District became its own contractor and "subcontracted" the project to 5 vendors, including Air Assurance.

As reported in the early unsigned draft report, the District expended $64,219 on the Alternative Academy HVAC project to replace 6 HVAC units at the Academy. The project cost was substantially less than the engineers' estimate of $80,000, and approximately $83,000 less than the "low bid" of $147,500.

The two vendors receiving the largest "subcontracts" were Air Assurance at $19,733 and Elite Electric, Inc. at $21,986.

Technically speaking, knowing the project exceeded the PCBA $25,000 bid threshold, the District had two options following the rejection of the first bid. It could have rebid the project in its entirety, or do what it did to subcontract various aspects of the project. Under the second option, *formally bidding those "subcontracts"* would have been the appropriate procedure to follow.

In an interview with the former Director of Maintenance, Bill Miller, he indicated that it had been the working assumption (interpretation) that a "subcontractor" situation did not have to be bid, unless the cost exceeded the $25,000 PCBA bid threshold. He also indicated that he was "surprised after all these years" and routine annual audits to learn the District had not been properly bidding some of its projects during the years in question.

The above interview also explains to a great degree the other two projects that reportedly had not been bid in FY05 and FY06. The two projects cost $29,409 and $34,723, respectively, but the "subcontracts" in both projects were far less than the $25,000 bid threshold in place at the time.

In our audit period, the only project described as "order splitting" in the early unsigned draft report should have utilized at least "written bids," in accordance with the Public Competitive Bidding Act.

The one project of the four "order splitting" examples that occurred in our audit period replaced two 10-ton HVAC units on Building F (cafeteria) at the high school site. Effective July 1, 2006, the bid threshold for public

construction projects requiring ***formal sealed bids*** was increased to $50,000.

The total project reported was $25,225. However, under 61 O.S. § 103 (D), which applies only to "public school district property," the District should have obtained "written bids" (basically written quotes) for the cafeteria project. Since it exceeded $25,000, the project was in the intermediate range between being exempt from bidding (<$25,000) and requiring formal sealed bids (>$50,000).

Again, based on our interview with Miller, the District's working assumption (interpretation) had been that "subcontracts" of less than $25,000 did not have to be bid. The three "subcontracts" for this project were all well below $25,000.

Conclusion: As in Objective #6, we concluded that the non-compliance with the Public Competitive Bidding Act was more the result of inadequate training and other factors, rather than intentional or deliberate decisions to violate the Act.

During the course of the audit, there were many interviews and attempts to obtain bids and other records and to verify school information. Our team observed that the District had been on a "fast track" for growth for an extended period of years and is now one of the largest school districts in the state.

We were struck with the impression that the various management and administrative functions in the District had not "evolved" as quickly as necessary to match the growth and size of the student population and the facilities required for those students. In effect, the administrative and management structure was still operating in some ways as it possibly had in 1995, rather than keeping pace with the accelerating growth of the District over the past 15 years.

In one interview, the former Director of Maintenance commented that the maintenance department was "operating at 1996 staff levels." In another interview concerning the storage unit fire described in Objective #12, a comment was made that "Broken Arrow is a small community...like a town of 10,000 surrounded by 90,000."

We concluded that the various examples of non-compliance with the Public Competitive Bidding Act were the result of inadequate training for staff, failure to timely incorporate statutory changes into District policies and procedures, unclear lines of authority, inadequately defined or overlapping job responsibilities, internal miscommunication and/or bureaucratic "infighting" that hindered communication and resulted in poor planning. We do not believe the failure to comply was intentional or designed to evade or avoid provisions of the Public Competitive Bidding Act.

RECOMMENDATION Same recommendation as Objective #6, i.e., improved training for the purchasing staff and other staff who have any duties related to purchasing or bidding, including the following subsequent event.

SUBSEQUENT EVENT On October 22, 2010, the Attorney General issued an opinion, 2010 OK AG 13, which states in part:

> There is no authorization for a school district becoming its own construction manager...a school district may not use in-house personnel to act as its own construction manager.

The opinion permits "force account" projects described as follows:

> Based upon the above, we conclude that a school district may, on a force account basis, use its employees and their skills to do as much work toward a construction project as it decides in its best business judgment to accomplish, and contract out the remainder of the project as a public construction contract under the applicable provisions of the Act.

OBJECTIVE #8: DETERMINE IF A VENDOR WAS EXCLUDED FROM BIDDING.

BACKGROUND

This issue, included in both the leaked, unauthorized document and the early unsigned draft report, relates specifically to the exclusion of an HVAC vendor from being allowed to quote or bid on the District's HVAC preventive maintenance contract discussed in Objective **#6**. The early unsigned draft reported:

> Only two companies returned quotes for the April 2007, request for quotes to perform HVAC work during the 2007-08 term. Air Assurance submitted a quote for $152,879 and McIntosh Services, Inc. submitted a quote for $241,557.

The preventive maintenance quotes were administered by Director of Purchasing, Mark Bilby. As previously noted, Bilby stated the District was not aware of the statutory change to the PCBA requiring formal bids for preventive maintenance services.

FINDING

One vendor was excluded from the request for quote process in April 2007, due to the loss of a 2004 civil case in Tulsa County.

Bilby provided us with a list of companies contacted to seek quotes for the District's HVAC preventive maintenance contract. The listing reflects that nine companies were contacted, but only two, those cited above, submitted quotes. One vendor, a competitor to Air Assurance, was not included in the list of vendors.

According to Bilby, he was told by then Maintenance Director Bill Miller to exclude the vendor from the quote process. Bilby said he did not ask why, and it was "not his decision" to include or exclude a vendor from the process.

According to Miller, the reason he told Bilby the District "may not want to include" the vendor was because he had read on OSCN.net that a judgment had been entered against that vendor for unprofessional conduct. "OSCN" is the acronym for "Oklahoma State Courts Network."

OSCN.net is a publically accessible website that allows anyone to retrieve and review court cases filed in 13 counties in Oklahoma. The case

identified by Miller was filed in the District Court of Tulsa County and our auditors confirmed the case involved the vendor that was excluded.

According to the case records on OSCN.net, the cause of action was listed as "Civil relief less than $10,000: PROFESSIONAL NEGLIGENCE." The entry for final disposition was recorded in 2004, and indicates a judgment in favor of the plaintiff.

Although the vendor list was maintained by the District's purchasing department, it appeared in this situation there seemed to be some confusion as to whether the purchasing department or the maintenance department was ultimately responsible for the District's purchasing and bidding procedures.

The job description of the Purchasing Director, in relation to bidding, states:

> Supervises and coordinates the preparation of bidding documents, instructions to bidders, specifications, and form of proposal with main emphasis on the clerical completion of documents needed.

The job description of the Maintenance Director, in relation to bidding, states:

> Prepares Board agenda items, obtains bid specifications and conducts bid openings per Competitive Bid Act, processes daily requisitions.

Trish Williams was the Chief Financial Officer (CFO) for the District during the time the preventive maintenance quotes were being requested. According to Williams, the responsibility for bids and quotes ultimately rested with the purchasing department and specifically with the director of purchasing.

It should also be observed that the District has a duty and obligation to assess the quality and/or capability of potential bidders to actually perform the services or provide the product the District needs. The Board, acting through the District's purchasing and administrative staff, also has a duty to evaluate and select the "lowest and best" bid or quote, not necessarily just the lowest, nor just the "best," if the "best" is judged to be overpriced, or simply beyond the District's budget for the purchase.

Part of the above process involves excluding potential vendors that have either failed to perform in the past, or vendors in which there is evidence of potential failure, for example, a company known to be financially "weak." In this case, a company that had been successfully sued for "professional negligence" was excluded. It would seem that parents and teachers would have had reasonable cause for concern, if such a vendor had been included and eventually obtained a "preventive maintenance" contract.

RECOMMENDATIONS The District should:

1. Clarify who is ultimately responsible for the inclusion or exclusion of vendors during the process of obtaining bids or quotes and;

2. Establish a procedure to adequately document the reasons for any exclusion of specific vendors from any bid or quote process in order to avoid future misunderstandings.

OBJECTIVE #9: DETERMINE IF THE DISTRICT WAS OVER BILLED FOR HVAC SERVICES.

BACKGROUND

Under a section entitled "Subsequent Events," the early unsigned draft report contains the following statement:

> The school employed two full-time HVAC employees and they now obtain estimates and quotes from various HVAC businesses for all HVAC work that is not performed in house. During the 2008-2009 school year, the school has expended $314,354, which included the two full-time HVAC employees for HVAC services. **The school had previously paid an average of $525,206 per year since July 1, 2002. This is a reduction and savings to the school of $210,851 per year.** [emphasis added]

The leaked, unauthorized document included a similar statement reflecting the "school had spent $287,000 less for HVAC services during the 2008-09 school year." The implication in both documents was that the District had been overpaying for its HVAC services, and that the change to hiring its own in-house HVAC employees was a beneficial decision.

FINDING

The alleged savings from hiring HVAC staff internally was not substantiated by additional analysis and subsequent evidence.

When we reviewed the supporting documentation for the "reduction and savings...per year" sentence, we found the statement or conclusion to be misleading. Based on further review, the so-called "savings" should have had some type of qualifying language for context.

The only support for the "subsequent event" conclusion was two press releases, one proposed and one actual press release. Both documents reported a savings figure of "$287,228." The official press release, titled "BA School District Analyzing HVAC Costs for 2008-2009 School Year," included significant qualifying statements from the maintenance director. Robert Burns questioned the validity of the savings and was quoted as follows:

> [A]ll we have done this year is put out the worst fires.
>
> Our two new HVAC guys are doing well, but they simply cannot get to (all of the) maintenance required on 1,700 units.
>
> Nowhere near has the number (of units) needed been touched for cleaning and checking units out for proper functioning. This (lack of routine maintenance checks) could result in many more breakdowns (in the future) as units clog and freeze up.

In addition to the two press release documents, the prior audit work papers included emails between school administration officials, including an email from District CFO Ann Wade stating, in relevant part:

> As I have stated to you, this was the plan all along. We knew if we only hired 2 HVAC personnel, not all the work could be performed, but it was a start. It would also be my recommendation to increase the staff to 4-HVAC personnel but I don't know even with 4 personnel if we could perform preventive maintenance on all 1700 units a year and complete all repairs within the district but again it is a start.

The District currently has 4 HVAC personnel, as suggested in the Wade email. We interviewed one of those HVAC employees who said even now, with 4 HVAC employees, *the District was still not performing 100% of the preventive maintenance*.

Using the "1,700" unit figure in the press release, a five day week and a 52 week year, the 4 HVAC staff would have to perform preventive maintenance work on an average of 1.63 units per day. This estimate includes no allowance for *any* leave time and no estimate for the time needed for actual repairs, HVAC unit replacement or other duties, so it is little wonder that Burns was concerned about insufficient preventive maintenance being done.

The District provided us with a cost analysis for FY10 reflecting the District had spent approximately $691,000 on HVAC services, an increase of over $376,000 from FY09 (the year with the reported "savings"). The amount expended in FY10 suggests that any "savings" were only temporary, achieved by shifting some shorter term preventive and actual maintenance or replacement costs to the intermediate or longer term.

Other statements in the early unsigned draft report and the leaked, unauthorized document implied that Air Assurance had been overbilling the school. For example, the unsigned draft report states:

> By the end of May 2008 when Air Assurance cut service with the school, the school had paid Air Assurance $563,956.58 for the 2007-2008 school term. This amount exceeded the April 2007 quote of $152,878.50 by $410,078.08.

The $152,878.50 quote or "bid" from April 2007 was only for the "preventive maintenance" contract. That quote for "preventive maintenance" did not include *any estimate or allowance* for new installs or actual repairs. The comparison was invalid. It was an "apples to oranges" comparison without support.

Conclusion: In reviewing the documentation contained in the prior audit work papers, and in comparing the HVAC expenditures of the following fiscal year, the support for the District having saved any money by hiring its own HVAC staff is inconclusive. The implied annual "savings" of $210,000 to $287,000 versus outsourcing HVAC services to Air Assurance, or some other vendor, appears highly improbable.

RECOMMENDATION No recommendation is provided for the above finding.

OBJECTIVE #10: DETERMINE IF HVAC ITEMS, SPECIFICALLY "HEAT EXCHANGERS," AND SERVICES PAID BY THE DISTRICT WERE RECEIVED.

BACKGROUND

The early unsigned draft report included a section under the heading "Determine that HVAC items and services paid by the school were received." The section includes information about the cost and number of heat exchangers replaced, and an assertion that Air Assurance was replacing the heat exchangers unnecessarily and, contrary to the best interests of the District.

Excerpts from the early unsigned draft report state in part:

> During heat checks, Air Assurance replaced numerous heat exchangers;
>
> SAI contacted other HVAC vendors with regards to this issue and was informed that it is generally not cost effective to replace the heat exchanger. The usual industry practice is to replace the entire unit.
>
> According to these HVAC companies, heat exchangers typically last for about 15-25 years.
>
> [T]he maintenance department did not verify that work was done and could not tell how much work was done on a particular HVAC unit...

The early unsigned draft report section did not indicate any test work had been performed related to the actual concern and apparently drew a conclusion based on the statement(s) of a competing HVAC vendor.

FINDINGS

The replacement of heat exchangers in the District was not extraordinary when compared to the actual number of HVAC units the District owns and must maintain.

The early unsigned draft report states:

> During the 2006-07 school term, 16 heat exchangers were replaced at a cost of $30,569.68.
>
> During the 2007-08 school term, 34 heat exchangers were replaced at a cost of $69,427.18.

The early unsigned draft report did not provide any context or perspective relating to the number of heat exchangers replaced versus the number of heat and air units in the District. An October 2010 inventory list indicated the District had 1,569 heating and air units.

Using that figure, replacing an average of 25 heat exchangers per year equates to less than 2% of the total number of HVAC units. Using the "high" end of the estimated life of a heat exchanger (25 years mentioned above), the District could be estimated to replace *as many as 62 units annually (1,569 / 25 yrs = 62)*, based solely on the number of units in operation.

Average age would also have to be factored in to determine a more reasonable estimate. The District has a wide range of new, old, and "average" aged units, so replacing 16 heat exchangers in one fiscal year and 34 in the next fiscal year would not appear to be an extraordinary number of replacements.

In addition, when a heat exchanger is found to be cracked or to have a hole in it, there is a risk of introducing carbon monoxide into the room or rooms serviced by the damaged unit. Because of the risk to students and staff, the District must either replace the heat exchanger or replace the entire unit.

According to maintenance department officials, the reason the District was replacing heat exchangers rather than entire units, was because they did not have the money to replace entire units.

We contacted an HVAC parts supply company, who was not a competitor of Air Assurance, and spoke with the Operations Manager and with two Technical Service Specialists who had 35 and 40 years experience, respectively, in the HVAC business. Both specialists stated they were not aware of any "usual industry practice...to replace the entire unit." The

decision to replace the heat exchanger versus replacing the entire unit is a situation specific type of decision.

The District was not verifying that the heat exchangers were being replaced because of the number of units and locations involved. Moreover, according to former Maintenance Director Bill Miller, at the time he left the school three years ago, the maintenance department was operating at 1996 staff levels and had over 11,000 work orders.

The audit team performed test work on two of three types of work done by Air Assurance and found the documentation of work performed in the District was consistent with the company's invoices and the District's purchase orders to pay Air Assurance.

We categorized the work Air Assurance was performing into three areas:

1. Work performed as a result of a District request for service.
2. Preventive maintenance.
3. Repair work resulting from preventive maintenance.

Service requests resulted from a school official initiating a repair, such as a teacher complaint of no heat in a classroom. These repairs were largely self-checking. According to maintenance officials, if the repair was not done or did not correct the problem, then maintenance would again be notified by the classroom teacher who still would have no heat. Consequently, no test work was performed on this category.

When the Air Assurance technicians performed preventive maintenance, they prepared a handwritten preventive maintenance checklist listing the unit number, room number, unit type, model, serial number and preventive maintenance performed. When repair work was done as a result of the preventive maintenance check, the technician prepared an additional handwritten ticket for the repair work.

For FY08, we identified 41 instances in which repairs were done as a result of the preventive maintenance work. We asked Air Assurance to provide us the handwritten preventive maintenance checklist for each of the preventive maintenance jobs, as well as the handwritten technician's ticket for each of the repair jobs.

As a result of our request, Air Assurance provided 37 of the 41, or 90% of the handwritten preventive maintenance checklists and 40 of the 41, or 98% of the handwritten technicians' tickets for repairs. In each of the 5 variances (4 missing checklists and 1 missing ticket), there was at least one form of original technician documentation to support the work done and the invoice issued to the District.

From the District's HVAC invoices for FY08, we identified and reviewed 32 of the 34 reported invoices for the replacement of heat exchangers. We asked Air Assurance to provide us with the technician's handwritten repair ticket supporting each of the heat exchanger replacements.

Air Assurance provided the handwritten tickets for 31 of the 32, or 97% of the invoices. In the single instance of Air Assurance being unable to provide the handwritten ticket, the company provided a copy of the technician's 2008 time record bearing the ticket number supporting the replacement of the heat exchanger.

In addition to the handwritten technician's tickets, we also asked Air Assurance to provide us with the documentation indicating they had ordered the replacement heat exchanger units.

When Air Assurance orders parts, it includes the technician's handwritten ticket number on its purchase order as a cross reference. The technician's ticket also becomes the invoice number that is ultimately sent to the Air Assurance customer. The billing system uses the ticket number to cross reference the purchase order for parts to time records and to the final invoice for parts and service.

For example, Air Assurance invoiced the District for the replacement of a heat exchanger on February 19, 2008. The invoice number was "98944." The handwritten technician's ticket reflecting the replacement of the heat exchanger was numbered "98944." Air Assurance ordered the heat exchanger on February 7, 2008, with a company purchase order which also referenced the work order/ticket number "98944."

Air Assurance provided purchase orders reflecting its purchase of the heat exchangers for all 32 invoices we tested. Because of the manner in which Air Assurance maintains its job/project records, we were able to tie each of the 32 purchase orders to adequate supporting documentation and to the invoices sent to the District.

Conclusion from test work performed:

Based on the interviews and test work performed, we concluded the heat exchangers, as well as other HVAC parts and services invoiced to the District were received by the District.

RECOMMENDATION No recommendation is provided for the above findings.

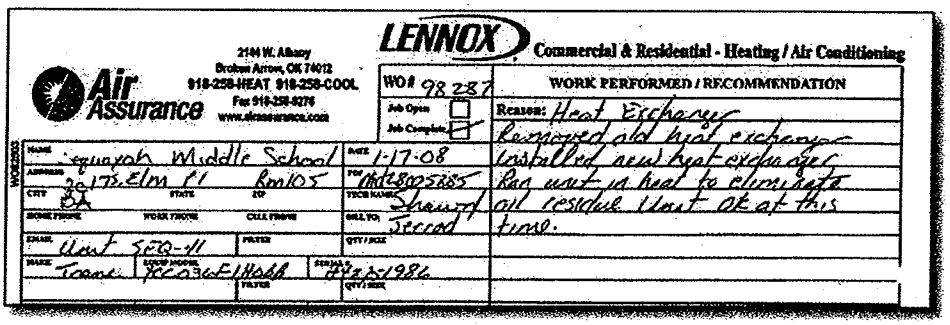
OBJECTIVE #11: DETERMINE IF THE DISTRICT PAID FOR WORK DONE FOR A PRIVATE BUSINESS.

BACKGROUND

This allegation referred to the District paying for an invoice for work allegedly performed at the Sequoyah Professional Building. With regard to the alleged repairs done, the early unsigned draft report included the statement:

> Heat exchangers do not have serial numbers, so SAI was unable to verify if the heat exchanger had actually been replaced.

We obtained a copy of the HVAC technician's handwritten ticket indicating the work was performed at Sequoyah Middle School and listing the address as "2017 S. Elm Pl Room 105" as shown in the image below:



LENNOX Commercial & Residential - Heating / Air Conditioning

Air Assurance
2144 W. Albany
Broken Arrow, OK 74012
918-258-HEAT 918-258-COOL
Fax 918-258-8278
www.airassurance.com

WO# 98287
Job Open ☐
Job Complete ☑

WORK PERFORMED / RECOMMENDATION

Reason: Heat Exchanger
Removed old heat exchanger
Installed new heat exchanger
Rec unit in heat to eliminate
all residual Unit OK at this
time.

NAME: Sequoyah Middle School
ADDRESS: 2017 S. Elm Pl Rm 105
CITY: BA STATE: ZIP:
HOME PHONE: WORK PHONE: CELL PHONE:
EMAIL: Unit SEQ-11
MAKE: Trane MODEL NUMBER: TCA036F1HA0A SERIAL #: 7192-1986
DATE: 1-17-08
PO#: MA28005185
TECH NAME: Shawn
SOLD TO: Second
PRICE: QTY / SIZE:

FINDINGS

The HVAC technician who performed the work, and the teacher in the classroom, both confirm the work was done at Sequoyah Middle School.

The address for Sequoyah Middle School is 2701 S. Elm, rather than 2017 S. Elm, as indicated on the handwritten invoice. The address "2017 S. Elm" is the address of the Sequoyah Professional Building.

The technician who performed the work, Shawn Longan, now works for the District. We interviewed Longan who stated the invoice was in his handwriting, and he recalled having performed the work at Sequoyah Middle School. We accompanied Longan to the school site, climbed onto the roof, and verified the unit was on the roof of the school building.

We verified the model number and the serial number on the invoice was the same as the unit on the roof of the school.

Air Assurance service trucks are equipped with Global Positioning System (GPS) technology that allows tracking of company vehicles. We obtained the GPS information from Air Assurance for the truck that was assigned to Longan. Using the coordinates provided and a handheld GPS device, we determined the service truck reportedly assigned to Longan was parked at Sequoyah Middle School for just over 8 hours on January 17, 2008.

Because of the issues raised, Longan wrote a handwritten statement which we obtained from Air Assurance. The handwritten statement by Longan included the following:

> During the installation, while burning off the excess oil on the new heat exchangers, we set the fire alarm off. Several teachers came outside + (and) were assured by Jerrod + (and) I that everything was normal + (and) there was no need for alarm.

We interviewed the teacher assigned to Sequoyah Middle School classroom #105 during the month of January 2008. Although the teacher could not recall the exact date, she did recall a time when work was being performed on the heating unit. According to the teacher, when the heating unit was turned on, smoke came into the classroom and, as a result of that smoke, she turned off the heating unit and got the children out of the classroom.

According to the teacher, it was only a minute or two before the workers who had been working on the system told her that everything was okay. She did not, however, believe that the smoke had actually caused the fire alarms to go off.

In recent years, the only apparent work done at OBGYN of Green Country, 2017 S. Elm, Suite 105, was a pilot light repair.

Because the HVAC technician's handwritten ticket includes the address "2017 S. Elm Room 105," we went to 2017 S. Elm, Suite 105, which is a business located in the Sequoyah Professional Building complex.

The proprietor of the business, OBGYN of Green Country, said she had been in the location for about nine years. We asked if there had been any

repair work done on the heating units for the business. She stated she could only recall one time, several years prior, where there was an issue with a pilot light not staying lit. The repair work was performed by Air Assurance.

We contacted Air Assurance and were provided an invoice dated January 8, 2008, indicating Air Assurance had received a service call from OBGYN of Green Country. The service call was related to an issue with a pilot light not staying lit. We asked for, and were provided, the records related to the payment of the invoice showing the service call was paid for by OBGYN of Green Country.

The physical dimensions of the heat exchanger billed to the District would not fit the type of furnace located at the Sequoyah Professional Building.

We asked Air Assurance to provide their documentation showing the order of the heat exchanger used to replace the one at the school site. Air Assurance provided us with a purchase order, reflecting the same work order number as the technician's handwritten ticket, indicating the heat exchanger was ordered from the O'Connor Company.

We met with Stuart York, Operations Manager for the O'Connor Company. He told us the part number reflected in the Air Assurance purchase order was the correct part number for the unit we observed on the roof of the Sequoyah Middle School.

York also told us this part would not fit in a standard residential furnace. We showed York a photograph we had taken of the heating unit at OBGYN of Green Country, and York confirmed this part would not fit in that type of furnace unit.

York took us into the O'Connor warehouse where he showed us the actual heat exchanger, part number EXC01364. The part measured 23 inches wide by 28½ inches tall by 35 inches deep.

We then returned to OBGYN of Green Country where we measured the dimensions of its furnaces. The furnaces are 16" wide leading us to conclude the heat exchanger is 7" wider than the total width of the residential model furnaces at OBGYN of Green Country.

The HVAC unit's *serial* number *was* included on the 2007 inventory, under a different unit number.

The early unsigned draft report states in part:

> The work order stated the heat exchanger was replaced on an HVAC unit SEQ#41 in January 2008. However, this unit was not listed on the maintenance department inventory dated March 2007.

"SEQ" identifies the unit as being at the Sequoyah Middle School site.

We reviewed the supporting documentation from the previous work papers and found the above statement was supported by an apparent District inventory list sourced to (obtained from) a competing HVAC company. The inventory list, dated March 2, 2007, omits "SEQ-#41," skipping in sequence from #40 to #42, but also showing additional units numbered to at least SEQ-#62.

On the March 2007 listing, *unit SEQ-#62 has the same model number and same serial number,* as the unit identified as "SEQ #41" in both the early unsigned draft report and the work ticket above. A newer District equipment list from August 2009, ends with unit SEQ-#57, and notes the serial number "48151986" associated with inventory item "SEQ-#41." This suggests either a correction to the earlier listing, a possible renumbering of the units, or a possible shifting of the unit in question at the Sequoyah Middle School site.

Conclusion: The street number on the work order ticket/invoice was erroneous. The work was performed at Sequoyah Middle School.

After reviewing District and Air Assurance records and conducting numerous interviews, we concluded the heat exchanger replacement occurred at Sequoyah Middle School. The above findings may indicate a problem in District inventory records, but they refute the allegation that Air Assurance had performed work on the Sequoyah Professional Building, that allegedly had been billed to the District.

We based our conclusion on the following:

- We interviewed the HVAC technician who stated he performed the work at the school.
- The handwritten ticket/invoice from the HVAC technician includes a model and serial number of a unit located on the roof of the Sequoyah Middle School.
- The ticket had the same 4 digits in the address as Sequoyah Middle School, but the digits were transposed in an apparent clerical error.
- GPS records indicate the HVAC technician was at the school for over 8 hours on the date the work was performed.
- Air Assurance ordered a heat exchanger unit from a supplier in the time frame in question. The heat exchanger ordered is for a package unit consistent with the unit at the school.
- According to the HVAC technician, when the unit was restarted smoke entered the classroom. We confirmed this fact with the teacher assigned to the classroom at the time.
- The interview with the business owner indicated the only work that she could recall at Suite 105 of the Sequoyah Professional Building was a pilot light repair, which was confirmed by records at Air Assurance.
- The physical dimensions of the heat exchanger in question would not permit it to be installed in the residential type furnace units at the business located at the Sequoyah Professional Building, Suite 105.

RECOMMENDATION Although we concluded the work was performed for the District, we recommend the District implement sufficient internal controls to ensure invoices are verified and any apparent discrepancies cleared prior to payment being made.

OBJECTIVE #12: DETERMINE IF DISTRICT RECORDS WERE DESTROYED IN A FIRE.

BACKGROUND

The early unsigned draft report addresses a storage unit fire that occurred at 1929 W. Concord Circle, Broken Arrow. The unsigned draft report, as well as the 80-page leaked, unauthorized document, includes the following statements:

> Upon arrival, fire personnel discovered a fire had been set in one of the storage units. Fire Marshall Paul Thompson discovered the nature of the fire to be suspicious with "no apparent source of ignition." The location of the fire was in close proximity to a unit maintained by Air Assurance for records storage.
>
> During his investigation he discovered invoices and purchase orders that had been stored in this facility by Air Assurance. Several of the folders and boxes containing these invoices were labeled "BA Schools." A number of the files survived the fire.

The leaked, unauthorized document continues with:

> The boxes contained purchase orders and other documents relevant to the investigation. Several of the banker's boxes had been numbered one through six. These boxes were labeled in such a way as to demonstrate the total number (example 1 of 6). The officer located boxes one, three, four, five and six. He was unable to locate box number two. Consequently this box would have contained invoices for Broken Arrow Schools given the labeling on the other five boxes.

FINDINGS

The storage unit fire did not reach the Air Assurance unit and did not destroy any relevant records alleged to be stored there.

The sentence contained in the unsigned draft report, "A number of files survived the fire" is misleading. In actuality, ALL of the files survived the fire, since the fire never reached the storage unit rented by Air Assurance.

The Broken Arrow Police Department obtained a search warrant for the mini-storage unit on February 4, 2009. The affidavit in support of the search warrant contains language nearly identical to the quotes above:

> Fire Marshall Paul Thompson will testify during his investigation of this scene he discovered the nature of this fire to be suspicious with "no apparent source of ignition." The location of this fire was in close proximity to a unit maintained by Air Assurance for records storage. During his investigation, he discovered invoices and purchase orders that had been stored in this facility by Air Assurance. Several of the folders and boxes containing these invoices were labeled "BA Schools." A number of these files survived the fire.

The language contained in the affidavit for the search warrant and the early unsigned draft report both appear to indicate there were "several folders and boxes" of records labeled "BA Schools." However, when we interviewed Fire Marshall Thompson he recalled that there had not been boxes of records but, rather, one file folder that referenced Broken Arrow Schools. He did not remember any boxes being labeled "BA Schools" and said if there was such a box, the fire department would have taken pictures of it.

We obtained a copy of the Broken Arrow Police Department "Evidence / Property Custody Document" indicating the BAPD had seized four items, as a result of the search warrant, as shown in the image below:

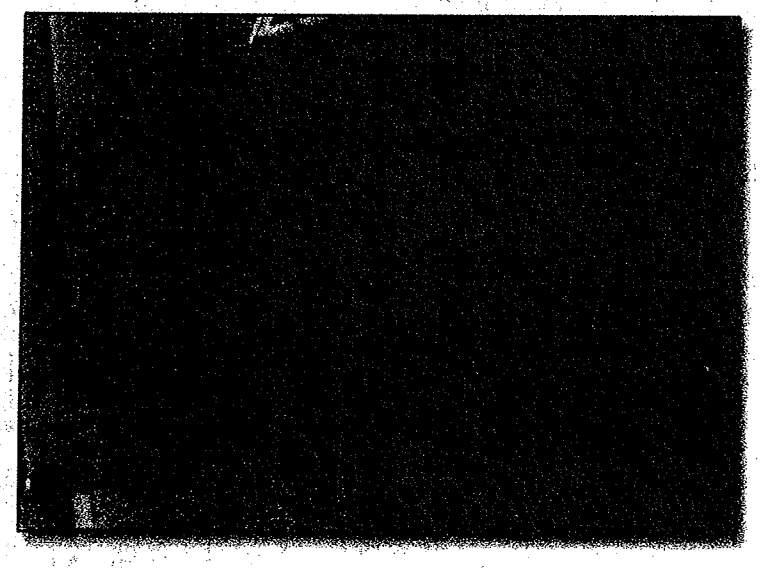
Item No.	QTY	DESCRIPTION OF ARTICLES Include model, serial number, condition and unusual marks or scratches	Location (leave blank)
1	1	1 BOX CONTAINING MISC. RECORDS/INVOICES/P.O.'S	4-4
2	1	1 BAG CONTAINING MISC. RECORDS/DOCUMENTS	
3	1	1 BAG CONTAINING MISC. RECORD/DOCUMENTS	
4	1	FILE FOLDER CONTAINING MISC. RECORDS/DOCUMENTS	
		END OF LIST	

Under the supervision of the Broken Arrow Police Department, we examined the records seized as a result of the search warrant. The "documents relevant to the investigation" seized by the BAPD included Air Assurance reports from 1998 through 2000, miscellaneous records related to the Broken Arrow School *Foundation* for 2002 and 2003, and job inspection summary sheets for 2000 through 2005. The "box containing misc. records/invoices/P.O's" was a gray plastic box containing

personal banking records for the owners of Air Assurance from 1990 and 1991.

The police department did not seize the boxes noted as being labeled "of six" and in which box number 2 was missing. According to Broken Arrow Police Captain Greg Sipes, the five "of six" boxes were examined by BAPD and determined to be of no value to their investigation, so they were not seized as part of the search warrant.

We contacted the owners of Air Assurance, Mike and Narissa Rampey, and asked what the "of six" boxes contained. According to the Rampey's these boxes contained old accounts payable records. The Rampey's stated that, after the investigation by the police and fire departments, they were allowed to retrieve their belongings from the storage unit. They retrieved the "of six" boxes and stored them.



We accompanied Mike Rampey to the location where the "of six" boxes were stored. We found four of the "of six" boxes, numbers 1, 3, 5, and 6, were labeled as such to indicate the records contained were from "1-2002" to "12-2002." The four boxes were labeled "A/P" indicating the boxes contained accounts payable information, rather than customer *accounts receivable* information that could have included District related invoices.

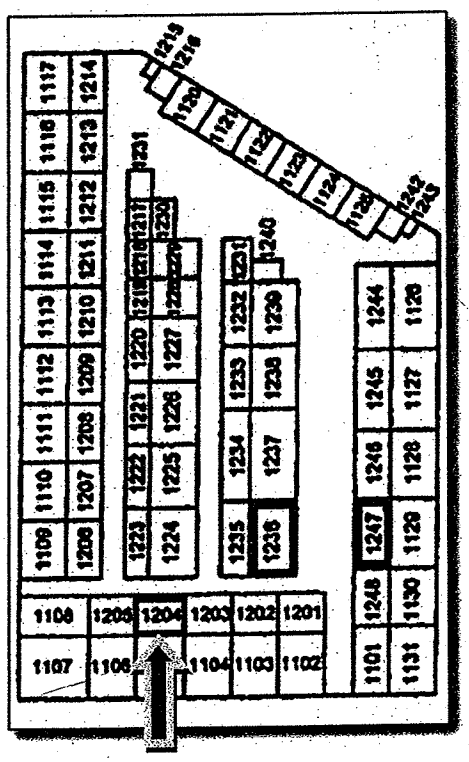
We reviewed the records contained in the four boxes and found the records were, in fact, accounts payable records from January 2002 through December 2002. We concur with the Broken Arrow Police Department that these records appear to have had no relevance to pending investigations related to the District.

The early unsigned draft report, with regard to box number "2," states, "[C]onsequently, this box would have contained the invoices for Broken Arrow Schools given the labeling on the other five boxes." That conclusion apparently based on a misreading of the labeling and little else, was pure supposition.

The "close proximity" of the fire was not that "close."

The unsigned draft report and the affidavit for search warrant both state the fire was in "close proximity" to the storage unit rented by Air Assurance. We obtained a diagram of the storage unit from the firm that was managing the facility, in order to determine what the term "close proximity" meant (see diagram).

According to Mike and Narissa Rampey, Air Assurance had rented unit 1204. The Rampey's provided us with a letter from the property management firm sent to them on February 6, 2009, stating, "[W]e request you please come and check your personal property stored in your Unit No. 1204, as soon as possible."



When we contacted the property management firm, we were told there was some confusion about which units were rented by Air Assurance. According to the property management firm, Air Assurance also had rented units 1031 and 1105. Unit 1105 was attached to unit 1204. Unit 1031 was in a separate section of the storage complex and not involved in the fire.

According to reports from Broken Arrow Fire Marshal Spradlin, the fire originated in the area of units 1236 and 1247 (shown in red in the diagram at left). As previously noted, the fire did not reach the Air Assurance unit (shown in blue at left).

We interviewed Acting Fire Chief Steve Jarrett, Fire Marshal Paul Thompson and Fire Marshall Stan Spradlin and asked each of them if they believed, based on their experience, the fire was set in an attempt to destroy the records contained in the Air Assurance storage unit.

Acting Chief Jarrett stated he did not believe it was an attempt to destroy records in the Air Assurance unit and felt the fire could have been the result of someone cooking "meth."

Fire Marshal Stan Spradlin said if the fire was set to destroy records in the Air Assurance unit, they (whoever did it) didn't know what they were doing, as the fire never reached the Air Assurance unit.

Narissa Rampey said that on occasions she had observed indications that homeless people had been sleeping in the storage facility. Broken Arrow Police Captain Greg Sipes recalled that the police department had responded to calls regarding homeless people at the facility.

Initially, when we asked Fire Marshal Thompson his opinion of the cause of the fire, he was reluctant to express an opinion. He later indicated that if the fire was set to destroy the records in the Air Assurance storage unit, then it was a poor attempt.

When we informed Fire Marshal Thompson of the possibility that homeless people were seeking shelter in the facility, he stated if that were true, he would be more likely to believe the fire was a "warmth fire." According to the fire department reports, the outside temperature at the time of the fire alarm was 38 degrees.

The transfer of the investigation from the fire department to the police department was the result of a perceived media leak suspected of originating in the fire department.

The unsigned draft report included references to the fire department having been told to "cease their investigation." The draft report also quoted Fire Marshal Paul Thompson as stating, "...this had never been done before on any fire he had worked in 24 years."

We interviewed Acting Fire Chief Steve Jarrett and former Fire Chief Jackie Carner who both said city officials were concerned about information related to the fire investigation being leaked to the media. As a result of those concerns former Fire Chief Carner was told to turn his investigation over to the Broken Arrow Police Department.

We then interviewed Broken Arrow Police Chief Todd Wuesterwald who told us the police department believed information related to the

investigation was being leaked by a member of the fire department. The investigator assigned to this case, Major Mark Irwin, also believed there was a problem with information being improperly provided to outside sources.

Chief Wuesterwald took his concerns about the leaks to City Manager Jim Twombly. As a result, the fire department was instructed to turn their investigation over to the police department.

Interviews with both police and fire personnel indicated that neither department concluded its respective investigation, before the matter was transferred once again to the Oklahoma State Bureau of Investigation to be included in that agency's investigation of the District.

Conclusion: The storage unit fire was not an effort to destroy evidence related to the previous audit and/or investigation of the District and Air Assurance.

Based on the above interviews and supporting documentation, we concluded:

- The fire did no damage to the storage unit used by Air Assurance, other than damage caused by smoke and/or water.
- Even if the fire had reached the unit, there was no documentation in the storage unit that was relevant to the issues raised in the early unsigned draft report and/or the 80-page leaked, unauthorized document.
- The transfer of the investigation from the BAFD to the BAPD was not an effort to obstruct the investigation, but rather an effort to maintain the integrity of the investigation and avoid further leaks to the media.

RECOMMENDATION No recommendation is provided for the above finding.

OBJECTIVE #13: DETERMINE WHY THE DISTRICT EXCEEDED THE ENCUMBRANCE AMOUNT OF A BLANKET PURCHASE ORDER.

BACKGROUND

The early unsigned draft report noted the issue of the District having exceeded the encumbrance amount of a blanket purchase order for HVAC services:

> In March 2008, Air Assurance submitted a number of invoices totaling about $77,000 which exceeded a blanket purchase order by more than $72,000. Ms. Dazey requested that the Air Assurance blanket purchase order number 2008-21-4 be increased by $72,250 to cover the invoices Air Assurance submitted for payment.

That early draft report took the position that the failure to encumber was related to work orders and that, "There was no communication between Air Assurance and BAPS Maintenance on work performed and pending work."

We determined the encumbrance issue was not significantly related to the work order system. Consequently, we are reporting these issues separately as Objectives **#13** and **#14**.

Some definitions for this objective:

- *Appropriation* – an amount legally approved for a budget account by the county excise board, county budget board or municipal budget board. The county excise boards approve "appropriations" for school district budgets (estimates of needs).
- *Budget/Estimate of Needs* – the legal "spending" plan for a public entity.
- *Purchase orders* – purchase orders, including blanket purchase orders, replaced the previous "claim" forms, as the document used for processing and approving the payment of bills for books, materials, supplies and services for school districts and other public entities.

- *Encumbrance* – part of the payment process which begins with the issuance of a purchase order or blanket purchase order to reserve, or set aside, or ***"encumber"*** an amount of appropriated funds for a future known ***or estimated*** expenditure to help a public entity not expend more than its legal appropriations.
- *Expenditure* – the actual transaction recognizing the creation of a liability (modified accrual accounting basis) and/or the disbursing of funds for a specific amount charged against a legal appropriation. Part of the expenditure phase is to reverse the previous encumbrance (or estimate) and record the exact amount of the expenditure, or "adjust" the encumbrance to match the exact amount of the expenditure.

"Blanket" purchase orders have been used in school districts, counties and municipalities, since the Purchase Order Act was passed in 1978. Blanket purchase orders were authorized under the provisions of **62 O.S. § 310.8** and may be used for "recurring purchases of goods or services." The same statute provides that a blanket purchase order "may be increased to cover unforeseen expenses." An ordinary purchase order is used for specific single order purchasing.

In March 2008, the District received seventy five (75) invoices from Air Assurance totaling $77,664 and drawn against the blanket purchase order #2008-21-4. At the time the invoices were received, the remaining encumbered balance on the purchase order was $680, resulting in an excess of expenditures over encumbrances in the amount of $76,984. The invoices were dated from February 8, 2008 through March 26, 2008.

FINDINGS

We identified several issues that contributed to the District having exceeded the amount encumbered on its blanket purchase order for Air Assurance HVAC maintenance and repairs.

These reasons, explained in greater detail below, include:

- Although two types of work were being performed, preventive maintenance and repairs, the District did not treat these as separate situations and issue separate blanket purchase orders to encumber funds for each type.

- Not separating the two types of service made tracking the encumbrances and expenditures for each type more difficult for the District.
- The District had chosen to only encumber 75% of the departmentally requested amount for HVAC repairs and maintenance.
- The District received an unusual number and amount of invoices at one time due to extenuating circumstances.

The District obtained a quote for providing preventive maintenance, but it did not track the payments being made for preventive maintenance separately from other HVAC work being performed.

Although the District obtained quotes for a preventive maintenance contract for FY08, the District combined the preventive maintenance work and repair work on the same blanket purchase order. This may have been another example of District administration/management operating on a "business as usual" basis without adequate planning.

The low quote received by the District for preventive maintenance was $152,879 from Air Assurance. At the start of FY08, a separate blanket purchase order and encumbrance could have been issued for this known contract amount.

Air Assurance technicians performed preventive maintenance work as time and scheduling allowed. The preventive work was not generally scheduled in advance. As such, it was more difficult for the District to determine the amount of funds already obligated or expended on the $152,879 preventive maintenance contract.

The lack of distinction between expenditures for preventive maintenance versus actual repair work contributed to the under encumbrance, or inadequate encumbrance, on blanket purchase order #2008-21-4.

The District had encumbered only 75% of the amount requested for HVAC services on the blanket purchase order.

According to maintenance department officials, a contributing factor for the $77,000 in invoices exceeding the blanket purchase order encumbrance was due to the finance department only allowing the

maintenance department to encumber 75% of the original amount requested for HVAC services.

We obtained documentation from the purchasing department indicating the maintenance department had requested $289,000 to be encumbered for the Air Assurance blanket purchase order. The actual amount encumbered was $216,750, or 75% of the requested amount. Had the full request been processed, the amount of invoices not covered by the encumbrance would have been approximately $4,800, rather than $77,000.

The District received an extraordinary amount of invoices for preventive maintenance and HVAC services, due to extenuating circumstances.

Under ordinary conditions, the maintenance department would review invoices and send them to the purchasing department every two weeks. However, the maintenance department received more invoices than usual from Air Assurance at the end of March, 2008. The invoices received included dates ranging from February 8, 2008 through March 26, 2008, a period of about 7 weeks.

According to Maintenance Secretary Wanda Dazey, ordinarily the maintenance department would request an increase to the blanket purchase order by faxing a request to purchasing. However, because so many invoices were received at the same time, the amount became too large to be covered by just increasing the blanket purchase order, as would ordinarily have been done.

According to Air Assurance interviews, the delay in submitting invoices to the District was due to several factors. First, there had been an ice storm during that period, and the company was without power for about a week. Second, Air Assurance was changing billing software, which caused some delay due to the transition from one system to another.

Third, some of the invoices previously sent to the District had been returned for a more detailed breakdown of work performed on the HVAC units. In combination with the software transition, this became a time consuming task that created further delays in getting the invoices to the District. All of the above factors combined to contribute to the more or less seven week accumulation of invoices that Air Assurance sent to the District at the end of March 2008.

Conclusion: A variety of circumstances contributed to the District's failure to encumber sufficient funds to cover the Air Assurance billings submitted at the end of March 2008. Although the amount of the invoices was unexpected, the maintenance department did not exceed their budget appropriation, which is the ultimate objective of an encumbrance system.

We obtained documentation indicating the insufficient encumbrance for Air Assurance at the end of March 2008 did not cause the maintenance department to exceed its budget appropriation. The District's March 31, 2008, "expenditure summary" report for maintenance indicated an encumbered but not yet expended balance of $349,521 and an unencumbered remaining balance of $270,995, out of an original budget appropriation of $1.828 million.

RECOMMENDATION The District should improve its controls over blanket purchase orders to include improved monitoring of both the amounts already utilized (encumbered/expended) and the remaining unused balances of blanket purchase orders.

OBJECTIVE #14: DETERMINE IF WORK ORDERS WERE PREPARED PRIOR TO WORK BEING PERFORMED.

BACKGROUND

This concern was addressed in the unsigned draft report under the heading "Determine if work orders were prepared prior to services rendered." The foundation for the concern appears to have been the inadequate encumbrance issue described previously in Objective **#13**.

The unsigned draft report also included the following:

> On August 7, 2008, Dr. Sisney received an email from school employee Dwight Hyams, that states preventive maintenance work orders are not created prior to work performed, they are created after an invoice is received at Maintenance.

FINDING

Work orders for *"preventive maintenance"* were not prepared in advance due to Air Assurance technicians performing the work on an informal "as other scheduling allowed" basis.

We obtained an email from Mr. Hyams stating the same thing; preventive maintenance work orders were not prepared in advance. The email states, in part:

> All efforts are made to keep track of repairs per site on TMA including Preventive Maintenance. Since Preventive Maintenance on HVAC (Large Scale) is worked as work load allows, work orders (MD#) are not created prior to work performed. They are created after invoices are received at Maintenance. On Preventive Maintenance all the units at one site may come in on a single invoice. Maintenance then creates work orders as required to track the cost of repairs that occurred due the preventive maintenance work done. This allows us to know how many work orders were required at that school site.

The unsigned draft report linked the unencumbered amount in the purchasing system to the work order system and implied the two issues were related. They were not related. At that time, the "work order" system was not designed nor intended to serve as a part of the payment or encumbrance system.

In particular, with regard to the *preventive maintenance issue* described in the Hyams' email, it was not a true "work order" system in the common usage of the term. Rather, it was used only as a "reporting" system to record work that *had been performed* and to accumulate the statistics and report on the preventive maintenance done at various District sites.

At that time, the preventive maintenance was being done by Air Assurance, and the technicians would perform the preventive maintenance at various times, as schedules permitted. No requests for preventive maintenance were initiated by the District.

Following the withdrawal of Air Assurance, and the hiring of in-house staff to perform HVAC maintenance service and repairs, the scheduling of preventive maintenance became a District responsibility. The new situation permitted the use of the work order system to function as it was designed with regard to any preventive maintenance service work scheduled and performed.

On January 21, 2009, an email notification was sent out by Joy Plested, Director of Accounting. The email amended the process and required that after January 21, 2009, work orders should be created in advance and would become a preliminary part of the payment process. According to our interviews, the email and change in procedures were in response to a recommendation by the District's annual financial audit.

Conclusion:

- **Until the District brought HVAC maintenance and repairs "in-house", the "work order" system was not being used or functioning as a true "work order" system for the preventive maintenance service.**

- **During the FY08 time period repeatedly cited in that section of the early unsigned draft report, there was no internal policy or procedural requirement that work orders be used to initiate *preventive maintenance* work.**

- **It was not until January 2009, that the work order system was incorporated as a formal phase of the purchasing/expenditure process.**

RECOMMENDATION No recommendation is provided for the above finding.

OBJECTIVE #15: DETERMINE IF THE DISTRICT PAID FOR WORK THAT WAS NOT REQUESTED NOR AUTHORIZED.

BACKGROUND

The early unsigned draft report, in the same "work orders" section, raised another issue/question in relation to the $77,000 of Air Assurance invoices submitted at the end of March 2008. The section included the following:

> There was no communication between Air Assurance or BAPS Maintenance on work performed or pending work.
>
> On April 1, 2008, Mr. Bilby says he asked Dr. Gerber how $77,000 of Air Assurance invoices were submitted without work being approved or requested...

These two statements imply the approximate $77,000 unencumbered or "under" encumbered amount resulted from Air Assurance having submitted invoices "without work being approved or requested."

FINDINGS

Of the approximately $77,000 invoiced by Air Assurance, 13.5% was for service/repair requests by District employees/officials; 78.8% was repairs/service identified in earlier preventive maintenance procedures; and only 7.7% was for current actual preventive maintenance.

We reviewed the invoices and corresponding work orders and found 42 of the 75 invoices (56%) sent at the end of March, related to actual "work orders," in the common sense usage of the term, created prior to work being performed.

Moreover, 35 of those 42 invoices appear to have been invoices resulting from specific District requests or for repair work identified in earlier preventive maintenance procedures. The following are examples of District requests:

- A work order was created on 2/27/2008 at the request of a custodian at Centennial school indicating there was no heat in a classroom. The invoice for this service work was dated 2/29/2008.

- A work order was created on 3/4/2008 at the request of a secretary at Oliver Middle School indicating two rooms had no heat. The invoice for this service work was dated 3/5/2008.
- A work order was created on 3/5/2008 at the request of a custodian at North Intermediate indicating a classroom had no heat. The request was made at 8:17 a.m. We obtained the service request form from Air Assurance indicating Air Assurance was notified of the problem at 8:38 a.m. and scheduled the service call on the same date.

Clearly, in the cases of demand calls for service, calls in which a school official reported a problem and requested the service, there was communication between Air Assurance and the District. The work was not being performed without first being requested.

Additionally, we noted, in some cases that work orders were prepared in advance for repair work done as a result of problems identified during earlier ordinary preventive maintenance. The following are examples of that type of repair:

- Invoice #99288, replacing a heat exchanger, was dated 2/28/2008. The work order, #MD28007117, was dated 2/22/2008.
- Invoice #99281, replacing a heat exchanger, was dated 3/4/2008. The work order, #MD28007257, was dated 2/26/2008.
- Invoice #99283, replacing a heat exchanger, was dated 3/5/2008. The work order, #MD28007255, was dated 2/26/2008.

The unsigned draft report states in part:

> Mr. Miller reportedly stated that all the District's preventive maintenance work should have been done in January and February.

This quote gives the impression that the $77,000 unencumbered amount was the result of Air Assurance having performed unnecessary preventive maintenance in March 2008, "without work being approved or requested" by the District.

Conclusion: Of the approximate $77,000 amount, only $5,992 (7.7%) consisted of ordinary preventive maintenance. The remaining amount consisted of $61,185 (78.8%) in actual repairs resulting from problems identified during earlier preventive maintenance procedures, and $10,487 (13.5%) resulting from District requested service/repair work.

Work performed at Oak Crest Elementary School was initiated the week before "spring break," with a follow-up service/repair call during spring break.

One unsigned draft report allegation centered on an invoice paid by the school for work reportedly performed at Oak Crest Elementary School. The invoice, dated March 18, 2008, reflected "Burning smell. Found burnt blower motor. Replaced motor and run capacitor – checked operation." The invoice amount was $558.86.

The allegation stemmed from the fact that the school was out on spring break on March 18, 2008 and, therefore, there would have been no one around to smell smoke, as indicated on the invoice. Spring break was during the week of March 17 through 21.

We obtained a copy of the March 18, 2008, invoice as well as the associated District work order MD28007742. The district's work order was supported by a District service request document created on "3/13/2008" with the language, "Smells like HVAC unit is hot. Called in yesterday."

We asked Air Assurance for their documentation related to this service call. Specifically, we asked for the service technician's handwritten invoice, and any information related to this service call. The following documentation was provided:

- A copy of the invoice sent to the school.
- The service technician's handwritten invoice.
- A CAD (computer aided dispatch) screen image.
- A handwritten statement from the service technician, Josh Buck.
- Time records for the service technicians for March 12 and March 18, 2008.

- GPS records for March 12 and March 18, 2008.
- An Air Assurance purchase order for ordering the motor that was replaced.

The handwritten statement from the service technician states that he was dispatched to the school on March 12, 2008, after normal hours, to investigate a smell of smoke. Upon his arrival, he noted there were adults and children in the cafeteria area, one of whom directed him to the outside mechanical closet containing the unit.

On December 16, 2010, we spoke by telephone with the technician, who has since moved to Florida. The technician said he did write a written statement concerning the work he performed and left that written statement with Air Assurance, prior to moving to Florida.

During our conversation, the technician recalled he had been dispatched to the school, because someone had smelled smoke. When he arrived, he went to the cafeteria area, where he was directed to an outside unit. The technician discovered the motor had malfunctioned, so he replaced it with a new motor, only to discover the new motor was defective.

A new replacement motor was ordered. The technician installed the new replacement motor, but he could not recall if he installed it during spring break or not. The technician said he would not have had to contact a school official, because it was an outside unit, and he had keys to the furnace closet.

We requested and received from Air Assurance its purchase order for the replacement motor. Air Assurance provided us with a purchase order dated March 13, 2008, for a motor ordered from Lennox Industries. The Air Assurance purchase order reflects its work order number "99514," which coincides with the handwritten technician's ticket, and the March 18, 2008, invoice received by the District.

We went to the school with two HVAC technicians from the District where we inspected the Lennox brand unit marked OCV-10. One of the District's HVAC technicians commented that the motor had been replaced, because the wires to the motor had been cut and spliced.

Air Assurance provided the dispatch records for the technician for this call. The dispatch records indicate the technician was dispatched to the school at 3:16 p.m. on March 12 and a return visit on March 18. The dispatch records also reflect the service work number "99514" and report the problem as "smell of something burning."

Air Assurance also provided GPS records for the technician for March 12 and March 18. Using these records we verified the coordinates reflect the technician was at Oak Crest School on March 12 and March 18.

There was an after-hours function at Oak Crest Elementary School called the "Broken Arrow Connections." We met with the school official who runs the after-hour's program who vaguely recalled some issue about smoke in the kitchen, but said it was so long ago she didn't have a clear recollection.

Conclusion: The Oak Crest Elementary School service call was initiated the week prior to spring break, with the motor replacement completed on March 18, during spring break.

Work performed at the Education Service Center (ESC) building during Spring Break 2008, was initiated by preventive maintenance service performed in February 2008.

A similar allegation claimed that Air Assurance was working on the Education Service Center (ESC) building during spring break of 2008, without having been requested and without authorization.

Based on documentation provided by a District board member, the allegation/concern referenced Air Assurance invoice #97744. The invoice was dated March 19, 2008, which coincides with Spring Break 2008 (March 17-21, 2008).

We requested Air Assurance provide all records for work performed on the ESC building in mid-March 2008. The following documentation was provided:

- Air Assurance invoice #97744 dated March 19, 2008.
- A handwritten HVAC technician report, #97444, dated February 13, 2008.

- An Air Assurance purchase order referencing work order #97744, dated February 18, 2008.
- GPS records for the Air Assurance technician performing the work.
- Electronic time records for the Air Assurance technician performing the work.

We reviewed purchase order records from the District maintenance department, including Air Assurance invoice #97743 for preventive maintenance work performed at the ESC building. The date of the invoice was February 14, 2008, which corresponds to the HVAC technician's handwritten report dated February 13, 2008.

The technician's handwritten ticket includes the notation "repairs from pm" (preventive maintenance) and included replacing a heat cover plate on "ESCR12."

Invoice #97744, dated March 19, includes the notation "heat check repairs" and references several work orders including MD28008298. Work order #MD28008298, also reflects the replacement of a heat cover and includes the notation "heat check repair."

Conclusion: From our review of the documentation, the initial service call for preventive maintenance occurred on February 13, 2008. During the preventive maintenance procedures, additional repair work was identified and subsequently performed during spring break on March 19, 2008.

Overall conclusion: The service work and repairs done were authorized by either specific District service requests and/or specific needs identified in previous preventive maintenance procedures performed.

RECOMMENDATION No recommendation is provided for the above findings.

OBJECTIVE #16: DETERMINE IF THE BOARD APPROVED "SUPERINTENDENT STIPENDS."

BACKGROUND

A concern related to us involved the former Superintendent Jim Sisney giving questionable payroll increases, or stipends, to selected administrative employees.

According to the District Payroll Director, the stipends appeared to be a way to show favoritism towards selected employees. During an interview with former Superintendent Sisney, he stated the stipends were a means to increase an employee's pay and were based on "judgment."

FINDINGS

Our review indicated that the Board had not specifically approved the stipends, but also resulted in a more generalized finding that there was no formal Board approval for ANY payroll contracts, other than the annual negotiated teachers' agreement.

According to the District records, stipends were provided to a limited number of administrative employees in amounts ranging from $2,000 to $16,300, as reflected in the tables below:

FY07

Employee	Gross Salary (*see note below)	Per Superintendent Stipend	Travel Stipend	Extra-duty Contract(s)
Brian Beagles	$107,767.67	$6,000.00	$6,800.00	$0.00
Keith Isabell	$87,501.28	$2,000.00	$6,800.00	$0.00
James Moburg	$95,555.06	$16,300.00	$0.00	$0.00
Wes Smithwick	$90,802.67	$5,000.00	$5,715.90	$0.00
Patricia Williams	$106,747.64	$6,000.00	$6,800.00	$0.00
Ken Ellett	$88,467.83	$2,000.00	$6,800.00	$0.00
Dusty Dilldine	$72,897.02	$2,000.00	$0.00	$0.00
Adam Foreman	$50,928.12	$0.00	$2,400.00	$0.00
Mark Bilby	$68,575.12	$6,000.00	$2,400.00	$0.00

FY08

Employee	Gross Salary (*see note below)	Per Superintendent Stipend	Travel Stipend	Extra-duty Contract(s)
Brian Beagles	$109,142.62	$6,000.00	$6,800.00	$0.00
Keith Isabell	$91,386.68	$4,400.00	$6,800.00	$0.00
James Moburg	$96,723.49	$16,300.00	$0.00	$0.00
Wes Smithwick	$112,054.29	$6,000.00	$6,800.00	$0.00
Patricia Williams	$108,195.65	$6,000.00	$6,800.00	$0.00
Ken Ellett	$89,549.11	$2,000.00	$6,800.00	$0.00
Dusty Dilldine	$71,694.00	$2,000.00	$0.00	$0.00
Adam Foreman	$54,221.58	$0.00	$4,800.00	$0.00
Mark Bilby	$68,296.20	$6,000.00	$2,400.00	$0.00

FY09

Employee	Gross Salary (*see note below)	Per Superintendent Stipend	Travel Stipend	Extra-duty Contract(s)
Brian Beagles	$110,358.99	$6,000.00	$6,800.00	$0.00
Keith Isabell	$92,480.15	$4,400.00	$6,800.00	$0.00
James Moburg	$102,672.60	$16,300.00	$0.00	$4,500.00
Wes Smithwick	*No longer employed with the District*			-
Patricia Williams	*No longer employed with the District*			-
Ken Ellett	$90,748.56	$0.00	$6,800.00	$0.00
Dusty Dilldine	$72,734.04	$0.00	$0.00	$0.00
Adam Foreman	$54,957.78	$0.00	$4,800.00	$0.00
Mark Bilby	$77,555.06	$6,000.00	$2,400.00	$9,000.00

*(*Note: The "Gross Salary" amounts are combinations of more than the 3 categories of added pay listed in the tables. Increases in the added pay columns will not necessarily match the changes in Gross Salary from year to year.)*

The stipends and other additions to base salary were included in the employment contract amounts.

The stipends did not appear to be related to the job title/position. For example, during the three-fiscal year period above, Dr. Brian Beagles and Dr. Gary Gerber were both assistant superintendents. Beagles received a stipend of $6,000, while Gerber received none.

Similarly, during the same time period, Jim Moburg, Cathey Metevelis and Bill Miller were all classified as "executive directors." Jim Moburg received stipends totaling $16,300 per year for all three fiscal years. Metevelis and Miller received none.

When a stipend was given to an employee, a payroll change request form is generated authorizing the increase in pay. We reviewed these payroll change requests and found, in many cases, the reason for the increase was "compensation increase" or "superintendent designation/stipend."

We reviewed the "superintendent designation/stipend" requests and have addressed those for each administrative employee below.

Dr. Brian Beagles

A payroll change request dated August 22, 2006, with a retroactive effective date of July 1, 2006, was signed by former Superintendent Sisney, increasing a previous stipend from $6,800 to $12,800. The reason stated on the request was "superintendent designation/stipend."

Keith Isabell

On September 29, 2005, former Superintendent Sisney signed a payroll change request increasing Keith Isabell's compensation by $2,000. The increase was identified as "supr stipend," and the reason for the change was "compensation increase."

On July 3, 2007, another payroll change request was approved by former Superintendent Sisney increasing Isabell's compensation by $2,400. The reason reflected for this change was "+$2400 yr/-per supr designation travel."

In addition to the stipend amounts, Isabell also received an additional $6,800 travel allowance. We could not find, and the District was unable to provide, any documentation supporting the travel allowance.

Jim Moburg

On September 29, 2005, a payroll change request was made for Jim Moburg. According to the change request Moburg was paid $6,300 for a "car allowance." The payroll change request reflected, "duplication of travel compensation - now has a vehicle no need for stipend" and the $6,300 car allowance was shifted from a car allowance to a "supr stipend."

On June 22, 2006, a payroll change request was generated by Cathey Metevelis, and approved by former Superintendent Sisney, in the amount of $10,000 for the purpose of "superintendent recommendation."

In addition to the stipend increases, Moburg also received an additional $4,500 for an extra-duty contract in FY09 for the "executive management oversight of maintenance." When we reviewed the Board minutes for FY09, we could not find where this contract had been approved by the Board.

Wes Smithwick

A payroll change request dated August 22, 2006, was signed by former Superintendent Sisney in the amount of $12,800. The reason for the change was "new position – BOE approval 8-21-2006." The Board minutes indicated approval of the "new position," but there was no mention of the change in compensation.

Patricia Williams

A payroll change request dated August 22, 2006, with a retroactive effective date of July 1, 2006, was signed by former Superintendent Sisney. The request was a $6,000 increase from a previous stipend of $6,800 to a total stipend of $12,800. The reason stated on the request was "superintendent designation /stipend."

Ken Ellett

A payroll change request dated September 29, 2005, provided for an increase of $2,000 with a retroactive effective date of July 1, 2005. Former Superintendent Sisney signed the request indicating the reason for the change was "compensation increase" and the type of change as "supr stipend."

In addition to the $2,000 stipend, Ellett also received an annual travel allowance of $6,800. We found no documentation supporting the $6,800 travel allowance.

Dusty Dilldine

A payroll change request dated September 29, 2005, with a retroactive effective date of July 1, 2005, was signed by former Superintendent Sisney, increasing his gross salary by the amount of $2,000. The reason stated on the request was "compensation increase."

Adam Foreman

A payroll change request was generated by Cathey Metevelis on July 22, 2004, to provide a $2,400 travel allowance. Other than the Human Resources Director, there were no other signatures on the form.

A second payroll change request form was generated by Cathey Metevelis and approved by former Superintendent Sisney on July 9, 2007, increasing the travel allowance another $2,400, for a total of $4,800 annually. No reason was provided or specified for the $2,400 increase.

Mark Bilby

A payroll change request dated July 12, 2006, provided an additional $6,000 per year for "Additional duty – oversee district warehouse." Bilby also received a travel allowance in the amount of $2,400 in all three fiscal years reviewed.

Besides the $6,000 stipend to oversee the "district warehouse," Bilby also received two extra-duty contracts in FY09, each for $500 per month for the 9 month period of October 1, 2008 to June 30, 2009. Together, the two contracts totaled an additional stipend of $9,000 (2 x 9 months x$500.00/mo).

One extra-duty contract was for "executive management oversight of plant operations," and the other was for "executive management oversight of transportation." Both contracts were executed on January 15, 2009, *retroactive* to October 1, 2008, (under the Dr. Gerber administration).

We were not able to find Board approval for either the FY09 extra-duty contracts or documentation supporting the travel allowance.

FINDINGS

The process and the documentation for Board approval of administrative staff contracts, support staff contracts and various types of pay adjustments both need improvement.

In our review of Board minutes, we noted approval for the negotiated annual agreement for the teachers' contract *only*. We were unable to trace the approval of *any other staff* contracts, stipends, travel allowances or extra-duty contracts, etc., to votes recorded in Board minutes.

We interviewed Cathey Metevelis, Executive Director of Human Resources. She indicated her understanding was that the Board votes

separately on teacher contracts and administrative contracts and also votes separately on the (support) employee contracts (base contracts) and any contracts that comprise extra-duty contracts. She also indicated she was not aware of any specific schedule defining the amounts to be paid for "travel" allowances for administrative positions.

In a subsequent interview, she stated the Board signatures on staff contracts were affixed through the human resources computer software program. Two of her employees have access to the program that applies the signatures.

She indicated that in May of the preceding year the Board approves the "hiring of administrators for the succeeding year." That was her authorization to print contracts. We verified, through the minutes, the Board voting to hire administration for the succeeding year. However, the agenda item in the minutes is just for "hiring" with no names, details or specifics of the contracts being approved. This appeared to be another "business as usual," outdated procedure that had not been adequately reviewed or revised for an unknown period of time.

We interviewed former Board member Maryanne Flippo and current member Sharon Whelpley. Both were aware that Human Resources had their signatures and used them for staff contracts. Both board members stated that previously the approval for hiring was good enough in their minds to print contracts with their signatures. However, both indicated that in retrospect, they should have had more reservations or required more information about the use of computer generated signatures in the Human Resources office.

According to Duane Thompson, in the future, the Board will be presented with a total for administrative payroll for the next fiscal year, including a breakdown of each employee and their salaries for Board approval.

RECOMMENDATIONS

1. The Board and administration should review the process for approval for all personnel contracts, including any variations from, or modifications to standard pay schedules for administration, teaching staff and support staff.
2. All records documenting the Board's approval should be clear and unambiguous.

OBJECTIVE #17: DETERMINE IF THE DISTRICT PAID A "FALSE AND FICTITIOUS" INVOICE.

BACKGROUND

The early unsigned draft report and the leaked, unauthorized document both included an allegation concerning an invoice for the District's vehicle fleet insurance coverage. The unsigned draft report states in part:

> It was also noted that on May 22, 2007, the school paid NAICO, $7,842 for an insurance premium with a lapsed (coverage?) effective March 20, 2007 through May 1, 2007.

The 80-page leaked, unauthorized document states in part:

> The school paid the insurance provider, National American Insurance Co. a $7,842 insurance premium effective 3/20/07 through 5/1/07 on 5/22/07, after the insurance coverage period has expired.

Both the early, unsigned draft report and the leaked, unauthorized document alleged "the actions may be in violation" of various statutes including being a "false and fictitious claim," as well as a violation of a Federal law in relation to theft or bribery of a program receiving federal funds.

FINDING

The alleged and reportedly "false and fictitious" invoice was an ordinary premium adjustment to the District's catastrophic policy for its vehicle fleet, which came following an ordinary review of coverage.

The policy in question was a catastrophic coverage policy in the amount of $4,500,000 for the District's vehicle fleet. In March 2007, the insurance agent began reviewing the District's policy and subsequently determined the District was under insured on its buses and other vehicles. As a result, the policy coverage amount was increased to $7,500,000.

We interviewed the insurance agent who reaffirmed the policy change was due to the District being underinsured. According to the agent, when policy changes are made they become effective immediately, although it may take some additional time for the insurance company to process the change and submit an invoice reflecting the change.

On May 22, 2007, the District was sent a notification indicating an endorsement had been added to the policy, effective 3/20/2007. The notification states in part:

> The enclosed endorsement has been issued in accordance with a recent request to increase the specified peril limit to $7,500,000 on all vehicles owned, subject to a deductible...

The endorsement reflects the change was made to policy #SCH3561412. The invoice for the payment made also reflects the same policy number, as well as the policy effective dates, 7/1/2006 to 7/1/2007. The unsigned draft audit report and the leaked, unauthorized document were incorrect in concluding the policy had expired by the time of the $7,842 payment.

This premium transaction was an ordinary, run-of-the-mill, standard insurance policy modification and subsequent premium adjustment. Some policy adjustments result in refunds and some in additional premium due. The adjustment was retroactive to the date of the change in coverage, which is a standard practice for the insurance industry.

While reviewing the purchase orders related to the insurance premium payments, we noted the purchase orders were being issued to the National American Insurance Co, but the payments were being made to the Oklahoma State School Boards Association (OSSBA) Insurance Trust. This was also not necessarily an unusual situation.

According to the January/February 2010 issue of the JOURNAL, an OSSBA publication:

> As an alternative to commercial insurance, OSRMT allows member public school districts to come together and jointly self insure against the property and casualty exposures they face today.

OSRMT is the acronym for Oklahoma Schools Risk Management Trust. As stated above, the OSRMT is a "self insurance" effort to reduce insurance costs to the participating school districts. OSSBA also administers a similar self insurance trust for unemployment insurance coverage for state school districts.

Other [trade] associations have similar insurance programs for participating members. One example is the Association of County Commissioners of Oklahoma (ACCO).

RECOMMENDATION With regard to the issue of the purchase orders being made out to NAICO, but paid to OSSBA, the purchase order vendor name submitted to the Board for approval should be consistent with the payee on the disbursement, unless there is an "assignment of payment" form on file to document the change in payee.

We have no recommendation regarding the May 2007 invoice for the additional fleet coverage.

OBJECTIVE #18: DETERMINE IF A DISTRICT OFFICIAL SHREDDED SCHOOL DOCUMENTS RELEVANT TO THE VARIOUS ALLEGATIONS.

BACKGROUND

The 80-page unauthorized document contained an allegation concerning the shredding of documents by former Superintendent Gary Gerber. The shredding of documents was alleged to have occurred shortly after the termination of Dr. Jim Sisney as superintendent, and the interim appointment of Dr. Gerber to replace Sisney.

The early, unsigned draft report did not include the shredding allegation, but an unsigned September 2010 draft version included the following quotes which are similar in most respects to the comments included in the leaked, unauthorized document:

> The school received the shredder on November 4, 2008. Carol Yates stated that for at least three (3) days non-stop from 7:30 in the morning until 5:00 in the afternoon, Dr. Gerber closed his office door and shredded documents.
>
> Ann Wade stated that sometime in November 2008, after hours, she saw Dr. Gerber coming from his office. He was carrying two clear bags that contained shredded documents. He was walking toward the exit to the parking lot.
>
> BAPS employee Keith Isbell stated that at least on five (5) occasions from October 2008 to December 2008, he observed a clear bag of shredded paper in Dr. Gary Gerber's personal vehicle while it was parked at the school.
>
> Ms. Wade stated that Dr. Gerber came to her and told her he had heard rumors going around that he had carried shredded paper out. He told her he was carrying the shredded paper so that he could pack up dishes for the historical society.
>
> BAPS employee Patsy Brewer stated she helped Dr. Gary Gerber pack historical society dishes. She stated she helped him do this a very long time ago, a long time prior to him becoming the Interim Superintendent.

Additional information indicated the shredder mentioned in the first quote above was a typical home and office size shredder that fits on top of a small plastic trash can and that would be utilized for relatively light to moderate volumes of shredding on an intermittent basis.

Other reported comments imply that the alleged shredded documents were related to the District's HVAC services, which would then imply an attempted "cover-up" of some alleged wrongdoing. The unsigned September 2010 draft version contained the following:

> After Dr. Gerber was appointed as the Interim Superintendent, he locked all employees out of the office where HVAC records were contained. When he allowed access to the area a couple of months later, *three (3) employees stated numerous files were missing* and Dr. Gerber's handwritten notes had been added. [emphasis added].

We reviewed the supporting documentation and interview notes for the shredding allegation and made additional inquiries concerning this issue.

FINDINGS

The above comment concerning "HVAC records" was based on earlier interview notes from Joyce Rich, Carol Yates (secretary to former Superintendent Sisney), and Ann Wade (former chief finance officer). Only the Yates interview described Gerber actually shredding papers "in former Superintendent Jim Sisney's office," but the Yates interview gives no indication of the kind of documents being shredded.

The Wade and Rich interviews included comments concerning "missing files" described as HVAC, "PAC" (meaning Performing Arts Center) and "other." These "missing files" were described as missing from the prior office of Rich and from a room where purchase orders were stored. Wade stated she had observed Gerber carrying bags of shredded papers, but neither the Wade nor Rich interviews describe Gerber as actually shredding documents, as described by Yates.

We interviewed Dr. Gerber again concerning this allegation and he again responded:

> He stated that the Historical Society needed to pack artifacts to move. He asked technology to save their shredded papers. He never shredded anything himself. Patsy Brewer is the one he asked, but wasn't sure if she would recall. There were two bags

> left in the hallway that he picked up. He just picked them up; he didn't have anything to do with shredding the paper.

We requested more information on the move to a new location by the Broken Arrow Historical Society and Museum. The background Gerber provided included:

> The packing up of artifacts was a slow process, beginning in 2007, continuing through 2008, and the first half of 2009. The work was sporadic, occurring as she and the exhibit designer selected which artifacts would go on display for the opening...
>
> [T]he new museum held its grand opening on June 6, 2009.

We confirmed through an Internet search that the museum opening date was June 6, 2009. The shredding of documents allegation is consistently described as being in the November-December 2008 time frame, which would fit the timeline for the historical society packing and moving process.

The only item contrary to the timeline is the interview with Patsy Brewer in which she refers to the help she provided as being "a long time prior to him (Gerber) becoming interim superintendent."

Also, in August 2010 and November 2010 interviews with OSAI staff, Dr. Gerber described an incident that occurred at the District administration building following the October 6, 2008, Board meeting in which Dr. Sisney was suspended, and Dr. Gerber was appointed interim superintendent. Dr. Gerber and Bill Lear were returning to the administration offices and discovered Dr. Sisney with his brother Lee Sisney taking boxes from the Superintendent's office. The August interview indicated "10" boxes, and the November interview cited "10 to 12" boxes being removed from Dr. Sisney's former office.

Dr. Gerber indicated there were words exchanged since Dr. Sisney had been suspended and was not supposed to be on school property at that point in time. The Broken Arrow Police Department was called, and an incident report was filed. According to Dr. Gerber, Dr. Sisney maintained that the boxes contained only "personal items" that he was removing from the office.

Eventually, Dr. Sisney and his brother were allowed to leave the building with the boxes. The contents of the boxes were not inspected to determine what the boxes contained. Dr. Gerber also described in the interviews how the office was empty of files when he arrived the following day. A locksmith was called to open the Superintendent's office for Dr. Gerber to get in.

We find the above possible explanation for "missing files" to be at least as plausible as the Yates interview. That allegation was that Dr. Gerber had shredded documents for "...for at least three (3) days non-stop from 7:30 in the morning until 5:00 in the afternoon" (on a light duty home/office type of shredder). The Gerber interview at least had a police report to support it.

Additional interviews with Dwayne Thompson, Chief Administrative Officer, and Joy Plested, Director of Accounting, indicated that there had not been any issues of missing files or missing documents brought to their attention. Plested said that all original purchase orders are maintained by the finance department under strict controls. Only finance department personnel are allowed to retrieve original purchase orders, and the original purchase orders cannot be removed from the finance department.

Plested also indicated that if there were any purchase orders shredded, they were almost certainly copies, not originals with supporting documentation. The District was able to provide our audit team with all of the records we requested as part of the audit process.

According to Plested, when Joyce Rich was moved from the ESC North Building to the PAC Administrative Building, Rich's job duties were changed from assistant to the director of operations to a human resources position. It is at least plausible that files in her former office had simply been moved to a different location or office.

DISCLAIMER

In this report, there may be references to state statutes, Attorney General's opinions and other legal authorities which appear to be potentially relevant to the issues reviewed by this office. The State Auditor and Inspector has no jurisdiction, authority, purpose or intent by the issuance of this report to determine the guilt, innocence, culpability or liability, if any, of any person or entity for any act, omission, or transaction reviewed. Such determinations are within the exclusive jurisdiction of regulatory, law enforcement, and judicial authorities designated by law.