Office of the New York State Comptroller

Division of Local Government & School Accountability

Erie Community College

Board Oversight and Management of College Resources

Report of Examination

Period Covered:

September 1, 2013 — July 2, 2015

2015M-212

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State of New York
Office of the State Comptroller

Division of Local Government
and School Accountability

January 2016

Dear Community College Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, including community colleges, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Board of Trustee governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of Erie Community College, entitled Board Oversight and Management of College Resources. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law.

This audit's results and recommendations are resources for community college officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

Office of the State Comptroller
Division of Local Government
and School Accountability

State of New York
Office of the State Comptroller

EXECUTIVE SUMMARY

Erie Community College (College) was founded in 1946 and became a part of the State University of New York (SUNY) system in 1948. The College is located in Erie County (County) and has three campuses, one located in the City of Buffalo (City Campus), another in the Town of Orchard Park (South Campus) and a third campus in the Town of Amherst (North Campus). The College is a "community college" subject to Article 126 of the New York State Education Law and, as such, governed by a Board of Trustees (Board) composed of nine appointed members[1] and one elected student trustee.

The Board is responsible for establishing and monitoring compliance with policies governing the College's financial and educational affairs. The Board also selects service providers, awards contracts, and approves salary rates and employee benefits. The President of the College (President) is the College's chief executive officer, while the Chief Administrative and Financial Officer serves as the chief financial officer. Both are responsible, along with other administrative staff, for the day-to-day management of the College in accordance with policies established by the Board and SUNY.

During the 2014-15 fiscal year, the College had an enrollment of approximately 11,360 full-time-equivalent students. The College had 692 full-time administrators, faculty and staff. The College's budgeted appropriations were $112 million, which were funded primarily with County sponsorship money, tuition and other student-related fees, State aid, and various federal, State, local and private grants.

Scope and Objective

The objective of our audit was to assess Board oversight and management of College resources for the period September 1, 2013 through July 2, 2015. We also reviewed certain financial transactions and documentation pertaining to payroll and affiliated entities dating back to September 2010. Our audit addressed the following related questions:

- Did the Board properly authorize salaries and benefits for senior executive employees?
- Did the College use competitive methods when procuring professional services?
- Did the Board adequately oversee contracts with affiliated entities to ensure services were rendered as contracted and the consideration provided was appropriate?

[1] Five trustees are appointed by Erie County and four are appointed by the Governor.

Audit Results

The Board has established a lax control environment and has allowed management to assume Board responsibilities and make key financial decisions with little or no Board oversight. Additionally, the Board has allowed College officials to circumvent Board policies and compromise the transparency of College operations. The Board did not always perform its key financial decisions and deliberations in a transparent and public manner. As a result, the College's stakeholders, including the students and taxpayers who fund its operations, cannot be assured that College resources have been used properly or that decisions have been made in their best interest.

We found numerous control weaknesses over payroll processing and the maintenance of leave records. From September 9, 2010 through February 20, 2015, the President created 10 senior executive positions with salaries totaling $756,000 annually. Although the Board approved the creation of most of these positions, the rationale for approving these positions and the related salary information were not documented in the minutes as required by Board policies.

The President directed the Payroll Supervisor by email to make questionable compensation payments to two executives totaling $77,000 and increase the base salaries of all senior executives by 2 percent, totaling $27,000, without Board approval. The salary increase was never approved by the Board and was not clearly disclosed in other public documents or records such as the annual budget. The College's leave records also were inaccurate and had not been updated in a timely manner. As a result, two executives received overpayments totaling $5,285, and leave balances were overstated by 580 hours (about 72 days) with a value of approximately $25,000.

The Board also did not always ensure professional services were procured in a competitive manner. We reviewed payments totaling approximately $1.2 million made to 16 service providers during 2013-14 and 2014-15. The College paid 11 professionals a total of $440,000 for services without using proposals. Further, the Board did not enter into written contracts with eight professionals for services totaling $342,000.

The College has contracts with two affiliated not-for-profit corporations: the Auxiliary Services Corporation of Erie Community College (ASC) and the Erie Community College Foundation (Foundation). These entities provide certain services to the College's students and perform certain functions on the College's behalf. However, the written agreements do not provide a means for the Board to measure or monitor the entities in carrying out their contractual obligations to the College. Furthermore, financial transactions between the College and the entities were not always documented properly and conducted in a transparent manner.

The ASC is responsible for the distribution of the College's student activity fees. During 2013-14, the ASC distributed $1.5 million in fees on behalf of the College to various groups and organizations. However, the manner in which the College has directed the ASC to distribute these fees has not been transparent and the fees' purpose has not been clearly communicated to students. Since September 2010, the ASC has transferred over $1 million to the College in support of a capital project. However, the transfers were not handled in a clear or transparent manner and were not documented in Board minutes.

Pursuant to the operating agreement between the College and its Foundation, the College pays the majority of the Foundation's operating expenses and provides the Foundation with rent-free office space at the City Campus. The value of this compensation during 2013-14 was approximately $290,000. At times, the College provided additional financial support to the Foundation indirectly through the ASC. In exchange for the financial support it receives, the Foundation supports the College through fundraising efforts and is responsible for, among other things, receiving and administering the proceeds of any fundraising activities conducted for, or on behalf of, or with respect to the College. The Foundation Director generally reported gifts or donations to the President but did not report monetary gifts to the Board. The Foundation did not inform the Board of more than $303,000 in monetary donations and did not inform the President of two monetary donations totaling more than $154,000. Therefore, the Board could not ensure that such gifts are being used in the College's best interest.

The Board's failure to provide adequate oversight over the College's financial operations and key officials has helped to create an environment where there is no expectation to follow policies or to be accountable to the public for the use of College resources.

Comments of College Officials

The results of our audit and recommendations have been discussed with College officials, and their comments, which appear in Appendix A, have been considered in preparing this report. As indicated in Appendix A, College officials did not agree with some aspects of our report. However, they generally agreed with our recommendations and indicated they are taking corrective action. Appendix B includes our comments on issues raised in the College's response letter.

Introduction

Background

Erie Community College (College) was founded in 1946 and became a part of the State University of New York (SUNY) system in 1948. The College is located in Erie County (County) and has three campuses, one located in the City of Buffalo (City Campus), another in the Town of Orchard Park (South Campus) and a third campus in the Town of Amherst (North Campus). The College is a "community college" subject to article 126 of the New York State Education Law and, as such, governed by a Board of Trustees (Board) composed of nine appointed members[2] and one elected student trustee.

The Board is responsible for establishing and monitoring compliance with policies governing the College's financial and educational affairs. The Board also selects service providers, awards contracts, and approves salary rates and employee benefits. The President of the College (President) is the College's chief executive officer, while the Chief Administrative and Financial Officer serves as the chief financial officer (CFO). Both are responsible, along with other administrative staff, for the day-to-day management of the College in accordance with policies established by the Board and SUNY.

During the 2014-15 school year, the College had an enrollment of approximately 11,360 full-time-equivalent students. The College had 692 full-time administrators, faculty and staff. The College's budgeted appropriations were $112 million, which were funded primarily with County sponsorship money, tuition and other student-related fees, State aid, and various federal, State, local and private grants.

The College has contracts with two affiliated not-for-profit corporations to provide certain services to its students and to perform certain functions on behalf of the College.[3] These corporations are closely affiliated with the College in name and purpose, but they are separate legal entities and their operations and financial affairs are controlled by their own Boards of Directors.[4] The Erie Community College Foundation (Foundation)

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2 Five trustees are appointed by Erie County and four are appointed by the Governor.

3 For purposes of this audit, we assume the College had authority to enter into these contracts and that all of the provisions of these contracts are within that authority.

4 The Foundation's Board can have between five and 25 directors elected by majority vote of all current voting directors at the annual meeting. The President of the College and the Chair of the Alumni Association serve as ex-officio directors with all rights and privileges of elected directors. The ASC's Board is composed of nine appointed members including three students, three College administrators and three faculty members. The three Student Government Association Vice Presidents representing each campus serve as directors by virtue of their position and serve a one-year term. The College President appoints three administrators for two-year terms and the Faculty Federation elects or appoints the three faculty members for two-year terms.

supports the College through fundraising efforts and is responsible for, among other things, receiving and administering the proceeds of any fundraising activities conducted for, on behalf of, or with respect to the College. The Auxiliary Services Corporation of Erie Community College (ASC) distributes the College's student activity fees and operates auxiliary services such as coffee shops, cafeterias and bookstores.

Objective

The objective of our audit was to assess Board oversight and management of College resources. Our audit addressed the following related questions:

- Did the Board properly authorize salaries and benefits for senior executive employees?
- Did the College use competitive methods when procuring professional services?
- Did the Board adequately oversee contracts with affiliated entities to ensure services were rendered as contracted and the consideration provided was appropriate?

Scope and Methodology

We assessed Board oversight over selected activities related to our audit objective for the period September 1, 2013 through July 2, 2015. We also reviewed certain financial transactions and documentation pertaining to payroll and affiliated entities dating back to September 2010.

We reviewed financial transactions between the College and the two affiliated entities to determine whether the entities fulfilled their contractual obligations to the College and whether the Board adequately monitored the entities as service providers. During our review, the extent of our testing was limited to reviewing College records; therefore, we could not verify all financial data such as total revenues and expenses reported by these entities.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report. Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

Comments of College Officials and Corrective Action

The results of our audit and recommendations have been discussed with College officials, and their comments, which appear in Appendix A, have been considered in preparing this report. As indicated in Appendix A, College officials did not agree with some aspects of our report. However, they generally agreed with our recommendations and indicated they are taking corrective action. Appendix B includes our comments on issues raised in the College's response letter.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Secretary of the Board's office.

Board Oversight

The Board has a fiduciary responsibility for College assets and finances and an obligation to serve the stakeholders, protect students' interests and exercise good faith and due diligence. One of the Board's most fundamental roles is setting the right tone "at the top" which requires the Board to take an active role in significant financial decisions and ensure appropriate policies and procedures are implemented by management.

In many regards, the Board has taken a passive role and yielded much of its rightful decision-making duties and authority to the President. The President and other College officials have been allowed to act independently of the Board and have made significant decisions out of the view of the public and students.

The following deficiencies illustrate the lack of Board oversight and involvement which permitted management to override existing Board policies or substitute its own interpretation where contracts and policies were unclear. These deficiencies are discussed in further detail in the relevant sections of this audit report as detailed in the table of contents.

- The President assumed the Board's responsibility for establishing salaries and authorizing benefits for senior executives and was allowed to do so without adequate Board oversight.

- The Board did not appropriately establish and monitor policies and procedures for the procurement of professional services. Consequently, College officials did not always procure professional services in a competitive manner.

- The College entered into agreements with two closely affiliated but legally independent corporations, the ASC and the Foundation. However, the Board has provided little oversight over these contracts and has allowed College officials to blur the lines of separation by operating certain financial aspects of these entities as if they were one.

- The written agreements governing the relationship between the College and the affiliated entities were not sufficiently detailed to provide a means for the Board to evaluate the performance of the entities.

- The Board did not require or request important financial information that would have enabled it to monitor the affiliated entities in performance of their contractual obligations.

The Board should establish and oversee much of the policy, financial and ethical framework within which the College operates. Through its actions and policies, the Board should chart the course for the College's activities. The Board's lack of involvement in some cases, and lack of information and ineffectual monitoring in other cases, allowed College officials to circumvent the controls that did exist and to compromise the transparency of the College's financial activities and operations.

Recommendations

The Board should:

1. Take a sufficiently active role in all significant financial decisions.

2. Establish and maintain a control environment that fosters a commitment to compliance with relevant laws and College policies. The Board also should routinely monitor the implementation and compliance with its policies.

3. Ensure College officials maintain a separate and distinct relationship with the ASC and the Foundation at all times to ensure all three entities operate independently.

Executive Salaries and Benefits

The Board should authorize and approve all salaries and wages paid to employees, as well as any benefits provided to them.[5] The Board should clearly stipulate employees' compensation and benefits and document this authorization in writing by resolution, collective bargaining agreement, or in a policy document approved by resolution. Such documentation communicates the Board's intent to the officers and employees who must execute the procedures and provides public transparency of the Board's intentions. Furthermore, the Board should ensure that significant financial decisions, including decisions to create new positions and appoint new hires, are made in an open and transparent manner and are in the best interest of the College's students and taxpayers.

The Board did not authorize salaries and benefits for senior executives. The President assumed responsibility for establishing salaries and authorizing benefits for senior executives and was allowed to do so without adequate Board oversight. College officials did not submit required written justifications to the Board for approval prior to creating 10 senior executive positions with annual salaries totaling $756,000. Moreover, the College made questionable compensation payments to two executives totaling $77,000. In addition, leave records were not accurate or updated in a timely manner. As a result, two executives received overpayments totaling $5,285.

Newly Created Positions

According to Board policy, the Board shall require written justification prior to approving a full-time appointment or creating a full-time position. During the period September 9, 2010 through February 20, 2015, the College created 10 senior executive positions with salaries averaging $75,600 and totaling $756,000 annually.[6] The College also provided these employees with benefits including health insurance and retirement benefits with an annual cost of more than $200,000. However, College officials did not submit written justifications for creating these positions to the Board for approval as required. College officials stated that the Board was typically provided with verbal explanations justifying the creation of the various senior executive positions. Although the Board approved these positions, its rationale was not documented in the minutes. College officials also could

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[5] The Board appears to be required by a SUNY regulation to authorize and approve salaries and benefits. Section 604.2 of SUNY's regulations (8 New York Codes, Rules and Regulations (NYCRR) 604.2) provides that "the college trustees upon the recommendation of the president shall … determine and implement salary and employee benefit schedules …".

[6] The College also eliminated one senior executive position, resulting in a net increase of nine senior executive positions from September 2010 to February 2015.

not demonstrate how the Board determined that the positions were deemed necessary or essential to the College's operation.

Additionally, we found no evidence that the Board approved the salaries for the new positions. The President stated that he presented his salary recommendations to the Board and the Board approved them verbally. Therefore, the salaries and the Board's approval were not recorded in the minutes. The Board's lack of involvement in these significant financial decisions seriously undermines its ability to provide adequate oversight over the College's financial affairs and compromises the transparency of the College's operations.

Salary and Benefits

The Board has the responsibility to establish salary and benefits for all College employees. The Board can establish salaries and benefits by position as part of a collective bargaining agreement, Board resolution, individual employment contract or Board policy. In addition, adequate monitoring procedures should be implemented to ensure salary payments match Board-approved amounts and that employees receive only Board-authorized benefits.

<u>Authorization</u> – The salaries and benefits for most of the College's full-time employees have been established by collective bargaining agreements. However, individuals working in senior executive titles are not covered by the College's four collective bargaining agreements. During the 2013-14 fiscal year, salaries paid to senior executives totaled approximately $2.2 million. We reviewed the salaries and leave benefits provided to all senior executives on the payroll during the period September 1, 2013 through February 20, 2015 and found that salaries and benefits had not been authorized or approved by the Board.

The College had 29 individuals, including the President, working in a senior executive title/position during the period reviewed. The President's salary and benefits were established by an individual employment contract approved by the Board. However, we found no written Board authorization for the salaries and benefits provided to the other 28 executives. The salaries and benefits for 17 executives were supported by written appointment letters signed by the Human Resources Director but not approved by the Board. The salaries and benefits for nine executives were supported by written individual employment contracts that had expired as of August 29, 2007.[7] There was no written support or documentation pertaining to the salary or benefits[8] for the remaining two executives.

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[7] These executives had written contracts for the period August 30, 2006 through August 29, 2007. The Chief Administrative and Finance Officer had an expired individual employment contract and a memo directed to the Board Chairperson listing the salary and benefits that he desired. The memo was approved and signed by the Chairperson but not approved by the Board.

[8] No individual employment contract or appointment/offer letter

College officials told us that senior executives receive the same employment benefits established in the Administrator's Association of the Erie Community College Collective Bargaining Agreement (AAECC). However, College officials could not provide documentation indicating that the Board had approved the extension of these benefits to the executives. College officials stated that salaries were authorized by the President and discussed with the Board. The College's Executive Vice President of Legal Affairs stated that the Board had delegated its power to establish salaries to the President but could not provide documentation to demonstrate that the Board had formally done so. Moreover, as we read SUNY's regulations, the Board lacked authority to delegate to the President authority to establish salaries.[9]

<u>Salary Increases and Questionable Payments</u> – We reviewed the compensation paid to all executives during the period September 1, 2013 through February 20, 2015 totaling approximately $3.4 million and found that the President had authorized salary increases totaling approximately $41,000 and additional compensation totaling more than $77,000 for senior executives without Board approval.

In November 2012, the President authorized a 2 percent salary increase for all 15 senior executives on the payroll without Board approval. The average salary increase was $1,800 and totaled $27,000. The President authorized the increase in an email to the Payroll Department Supervisor (Payroll Supervisor). Although the Chairman of the Board was copied on the email, College officials could not demonstrate that the rest of the Board had been made aware of the raises. College officials also contended that the Board's approval was implicit in its approval of the annual budget. However, the 2012-13 budget and subsequent budget documents presented to the Board indicated that senior executive salaries reflected no increases.

The President also directed the Payroll Supervisor by email to give his secretary and office assistant salary increases. The President's secretary was given a 10 percent salary increase totaling $5,160 in July 2012 and a 4 percent increase of $2,298 in September 2012. The President directed the Payroll Supervisor to give his office assistant a salary increase of $6,500 (20 percent) in July 2012 and the step increases provided for in the AAECC for every year thereafter.[10]

The Associate Vice President of Information Technology (AVP of IT) also received questionable payments totaling $74,750 from March

[9] See 8 NYCRR 604.2.

[10] The President directed the Payroll Supervisor to change the assistant's salary to the AAECC group seven step three salary on September 1, 2012. She received the step increases provided for in the AAECC every year thereafter.

3, 2010 through September 20, 2013. In March 2010, the President directed the Payroll Supervisor in a memo to pay the AVP of IT a weekly stipend of $500 as additional compensation for a three-month temporary assignment. College officials could not provide adequate documentation describing the temporary assignment or additional work to be performed. On several occasions, the President authorized the Payroll Supervisor by email to continue the AVP of IT's stipends in varying amounts until September 2013.

In August 2014, the President directed the Payroll Supervisor in an email to pay the Vice President of Academic Affairs a one-time "cash bonus" of $2,500. The President told us that the bonus payment represented compensation for additional duties performed, but could not provide written documentation describing them or detailing the dates and times when they were performed. Without clearly defined compensation terms or sufficient oversight, the Board cannot ensure executives are being paid appropriately or as intended.

Unauthorized Employee Benefit – Senior executives' benefits generally paralleled the benefits provided to administrators by the AAECC. However, executives were provided with a unique time and attendance benefit not provided for or defined in the AAECC.

Senior executives are allowed to alter or "flex" their daily work schedule at will and on a regular ongoing basis without supervisory approval. Executives earn "flex" time for any time worked beyond eight hours a day and then save or "bank" their flexible hours to be used at their discretion for paid time off at a later date.[11] Flexible hours can be carried over year to year and can be accumulated up to 120 hours (15 days). The payroll department and human resources department implemented this additional fringe benefit for executives based upon an email directive from the President in April 2009 without Board approval.

Senior executives do not receive a cash payment for accumulated flexible hours, but they can and do accumulate a significant number of flexible hours which can be used in lieu of paid vacation time. Although there is no immediate benefit to preserving vacation leave time, significant unused leave time accruals provide employees with

[11] Article 11 of the AAECC allows administrators to occasionally alter their normal work schedule for work-related matters within the 80-hour pay period with supervisory approval. Additionally, the collective bargaining agreement allows administrators to earn, accumulate and use compensatory time. Compensatory time is earned when an administrator works more than 40 hours in a work week. Administrators can receive time off or payment for compensatory time and can accumulate up to 80 hours (10 days) if they were hired after September 1, 1999 and up to 200 hours (25 days) if they were hired before September 1, 1999.

an opportunity to receive employer-paid health insurance premiums during retirement.[12] Therefore, the Board should ensure adequate monitoring procedures are implemented. For instance, work schedules should only be altered with proper supervisory approval.

The Board's lack of involvement in establishing salaries and benefits seriously undermines the transparency of the College's financial operations. The College is a publicly-funded institution that receives approximately 50 percent of its funding from State and County taxpayers. As such, its financial operations should be open and transparent to all stakeholders including the taxpayers that fund its operations.

Leave Records

Paid leave time is an employee benefit generally granted to employees pursuant to collective bargaining agreements, employment contracts, policies or Board resolutions. When executives terminate employment with the College by retirement or resignation, they are paid the monetary value of their unused vacation time at separation. Therefore, it is especially important to maintain accurate leave accrual records and regularly reconcile leave balances.

Senior executives submit paper time cards to the payroll department to be processed every two weeks. Executives are also required to submit leave request forms prior to using leave time. The Payroll Supervisor is responsible for processing senior executive time cards. He reviews the time cards and hand writes data from time cards and leave forms onto a manual payroll summary form. The Supervisor then enters leave charges into the computerized payroll system to update leave balances.

We reviewed the time and attendance records of all 29 senior executives for the period September 1, 2013 through February 20, 2015 and found that leave records were inaccurate and had not been updated in a timely manner. As of March 2015, the Payroll Supervisor had not updated leave records since October 2014. The Payroll Supervisor stated that he had not had time to update leave records regularly because his department was understaffed.

Because leave balances had not been updated in a timely fashion, one executive was overpaid a total of $2,761 in January and February 2015. This executive was out on paid leave and had exhausted her leave balances by the end of December 2014. However, the College

[12] Employees who reach maximum vacation accruals under existing collective bargaining agreements are permitted to apply any accruals in excess of the existing maximums toward calculating their health insurance premium payment during retirement. Employees with 2,100 hours of accumulated unused leave time at retirement receive fully paid health insurance during retirement.

continued to provide her with paid leave based on the reported leave balances that had not been updated or reduced since October 2014.

We also identified numerous data entry errors that resulted in overstated leave balances totaling 580 hours (about 72 days). The value of these excess days at the executives' current salaries is approximately $25,000. We reviewed the recording errors with the Payroll Supervisor and he indicated that he would immediately correct the leave balances. However, one executive had already retired and cashed out his overstated leave balance upon separation, resulting in a total overpayment[13] of $2,524.

Leave accrual records were inaccurate because the Payroll Supervisor did not ensure that unused leave accrual balances were accurate and updated in a timely fashion. While the Payroll Supervisor is primarily responsible for updating leave accruals, neither the executives nor any other College official periodically review these balances to verify that they are accurate. Because College officials did not adequately monitor the accuracy of employees' leave accruals, the College is at risk of paying employees for leave to which they are not entitled at the taxpayers' and students' expense.

Recommendations

The Board should:

4. Ensure significant financial decisions, such as the creation of new positions, are conducted in an open and transparent manner.

5. Authorize all salaries, compensation and fringe benefits provided to senior executives.

6. Confer with the College's legal advisor as to the advisability of ratifying salary and fringe benefits provided to current and former College employees without prior Board authorization.

7. Take the necessary action to recover any salary and separation payments determined to have been improperly made to current and former College employees.

8. Adopt comprehensive time and attendance policies for senior executives. These policies should clearly define leave time benefits including "flex" time benefits.

[13] The executive received paid time off for 15.5 hours and cash payment at separation for 42.5 hours.

Senior Executives should:

9. Obtain and document supervisory approval prior to altering work schedules.

10. Establish procedures to provide for an independent review of leave records to ensure they are supported by timesheet entries and updated in a timely fashion.

The Secretary of the Board should:

11. Ensure that all official action taken by the Board, including actions pertaining to salaries and benefits, are recorded in the Board minutes.

Procurement

The significant dollar amounts and complexities of professional service contracts increase the need to obtain quality services at competitive prices. General Municipal Law (GML) does not require competitive bidding for the procurement of professional services that involve specialized skill, training and expertise; use of professional judgment or discretion; and/or a high degree of creativity. However, GML does require the Board to adopt written policies and procedures for the procurement of goods and services, such as professional services, that are not subject to the competitive bidding requirements. Soliciting competition for professional services helps ensure that quality services are obtained at a reasonable cost and avoids the appearance of favoritism or impropriety. In addition, College officials should enter into written contracts with professionals to establish the services to be provided and the basis for compensation and ensure that the professionals submit adequate documentation for any services for which they request payment.

Although the Board adopted a procurement policy that required obtaining competition for purchases not subject to bidding requirements, College officials did not follow it. The College paid 11 professionals a total of $440,000 for services without using requests for proposals (RFPs) as required by the College's procurement policy. The College also paid one professional $514,000 for services without verifying that State contract pricing was obtained. Further, the College did not enter into written contracts with eight professionals for services totaling $342,000 and paid two professionals a total of $72,400 based on claims that lacked dates or descriptions of the services provided. As a result, there is an increased risk that the College will overpay for professional services or pay for services that were not supplied as intended.

Proposals

An RFP generally is a document that provides detailed information concerning the type of service to be provided including minimum requirements and, where applicable, the evaluation criteria that will govern the contract award. Proposals can be solicited via public advertisement, or a comprehensive list of potential vendors can be compiled with vendors contacted directly and provided with the RFP. Evaluation criteria and any weighing or ranking of the importance of those criteria should be set forth in the RFP. The evaluation criteria, in addition to price, can include factors such as experience, staff availability, work plan and methodology to achieve the desired result, estimated completion times and references. The vendor selection process should be based on a fair and equitable review and evaluation or ranking of the proposals. A well-planned effort can help encourage qualified providers to respond to the RFP and ultimately result in increased competition and potential cost savings.

The Board's procurement policy[14] requires the use of competitive methods for acquiring professional services over $10,000, such as the solicitation of proposals through an RFP process. The "requestor" is required to obtain three responses or quotes and select the consultant providing the lowest appropriate cost proposal. The lowest cost proposal does not need to be selected when services are specialized. The policy also requires Board approval when procuring professional services.

We reviewed payments totaling approximately $1.2 million made to 16 contractors during 2013-14 and 2014-15[15] and found the College paid 11 professionals a total of $440,000 for services without the use of an RFP or other competition. Six professionals were paid a total of $186,000 for recruiting, training, computer system consulting, data mining, accreditation consulting and a study for relocating the nursing program without any evidence that a competitive process was used.

Five professionals were paid a total of $254,000 for architectural and auditing services where College officials represented that the College was procuring services through County contracts, also known as "piggybacking." Although there is a provision in statute allowing municipalities to procure commodities and certain services in this manner, College officials could not demonstrate that they had performed an analysis to determine whether piggybacking was cost effective or that they adequately reviewed County contracts to ensure they allowed piggybacking. Further, College officials did not ensure that the County used some form of competitive process prior to awarding the professional service contracts. College officials merely selected architects on a County-approved vendor list based on County requests for qualifications, not RFPs. According to County

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[14] College officials indicated that the policy entitled "Consultant Services/Guest Lecturers" was the College's procurement policy which applied to consulting services and professional service contracts. Although the policy is not entirely clear on this issue, it is our understanding that, in most instances, consultant and any other type of professional service contract with a value of $10,000 or more required the use of an RFP process prior to awarding the contract. Even if an RFP was not required, we generally recommend that a competitive process, such as an RFP process, be used prior to awarding professional service contracts. We note that according to the College's proposed new purchasing policies (introduced in June 2015), professional, technical or other consultant services having a value of $10,000 or more are to be procured by the use of an RFP.

[15] See Appendix C, Audit Methodology and Standards, for details on our sample selection.

officials, the County uses the list of qualified vendors to solicit RFPs on a project-by-project basis. However, College officials did not solicit RFPs prior to selecting a vendor from the County's list.

Furthermore, College officials could not demonstrate that they reviewed the County's procurement procedures with respect to the auditing services obtained to ensure the County properly bid and awarded the contract. College officials did not obtain or review copies of the contract, proposal specifications or proposals/quotes. Further, the engagement letter and correspondence indicate that the accounting firm provided a proposal to the College but there was no indication that officials sought competition for these services. However, it would have been permissible for the College to procure these services through County contracts. We found that the firm was providing auditing services to the College and County at different rates. The firm's proposal to the County was for three audit years, 2011 through 2013, with the option to extend the contract for two years at an average annual cost of $150,500 and an estimated hourly rate of $94.52. The College was quoted a lump sum of $33,700 for auditing services for the 2013-14 fiscal year and was not quoted an average hourly rate. We were told by the firm that the rates charged the College were not the same as those charged the County.

When competitive methods are not used to procure professional services, there is an increased risk of overpaying for those services and the appearance of favoritism or impropriety.

State Contract Purchases

One way the College can obtain professional services on favorable terms is to procure them off State contract. This allows the College to benefit from the competitive process already undertaken by New York State. When procuring services through State contracts, College officials are responsible for ensuring that the prices paid for those services are in accordance with the State contracts.

The College paid one professional $514,000 for information technology (IT) services and equipment without verifying that State contract pricing was actually obtained. This amount accounted for 43 percent of our sample total. The IT Director stated that he reviewed invoices prior to approving them for payment but he does not verify the pricing to ensure the vendor is charging the State contract price. We reviewed the invoices for the items purchased from this vendor and found that the College was charged in accordance with State contract pricing. However, by not verifying that State contract pricing is obtained, there is an increased risk the College could overpay for professional services.

Contracts and Documentation

The Board is responsible for entering into written contracts with professionals to establish the services to be provided, the time frames for those services and the basis for compensation. College officials should require that professionals submit service claims with adequate documentation to ensure they do not pay for services they do not receive, overpay for services or pay for services that do not comply with contractual conditions and rates.

The College did not enter into written contracts with eight professionals for services totaling $342,000, which included architectural services, leadership training, computer system and data mining consultation services. Further, the College paid two of these professionals $72,400 for system consultation, data mining and accreditation consultation even though the professionals submitted claims that lacked descriptions of the services provided. Although the accreditation consultant had a contract with the College, the contract did not specify documentation requirements to be paid. As a result, this professional was paid despite submitting claims that lacked specific dates or descriptions of the services that were purportedly provided.

Additionally, the College paid the architectural and engineering service providers over $200,000 for services rendered without written contracts or documentation demonstrating how the rate of compensation was determined or by whom. For example, an architecture firm was paid more than $28,000 for work subcontracted to other vendors and an additional $10,500 for drawings for a locker room renovation project. Similarly, an engineering firm, typically compensated at an hourly rate, was paid more than $19,000 for engineering services relating to a kitchen renovation project. College officials could not demonstrate how the project cost was determined. In both instances, there was no written contract with the firms.

Because of these control deficiencies, there is an increased risk that the College will pay for services it does not receive, overpay for services or pay for services that do not comply with contractual conditions and rates.

Recommendations

College officials should:

12. Procure professional services using a competitive method such as an RFP process.

13. Review documentation to verify that they have obtained State contract pricing.

14. Require that professional service providers submit

documentation that includes the dates and services provided before authorizing payment.

The Board should:

15. Consider amending the procurement policy to allow professional services to be procured from service providers who conduct business under a County contract. Any amended policy should include a requirement that purchasing officials verify the County's contract allowed the College's use, was bid and awarded in compliance with statute and was procured using a competitive process.

16. Enter into written contracts with professionals to establish the services to be provided, the time frames for those services and the basis for compensation.

Affiliated Entities

Community colleges require a number of services to adequately conduct business and meet their students' varying needs. The Board can choose to contract with private entities for the performance of some of these services. However, when deciding whether to contract for services, the Board should determine that a contract is in the College's best interests. Moreover, after the Board contracts for services, the Board must ensure that the College receives the services for which it contracted. To fulfill this responsibility, it is essential for the Board to ensure written agreements clearly define the contractual relationship and responsibilities of each party, including what services will be provided, when they will be provided, how they will be provided and at what cost. A written agreement should also stipulate how, or provide a means by which, performance will be measured and evaluated.

The Board has not provided adequate oversight over the College's contracts with the affiliated entities to ensure services were rendered as contracted and the consideration provided by the College was appropriate. The College, the ASC and the Foundation are separate and distinct entities governed by their own Boards. However, certain College officials − including the President and the CFO − hold key positions at the Foundation and the ASC, respectively. At times, it appears that these officials did not act as though they were working for three separate entities and often managed the entities' finances and operations as if they were one entity. The close relationship between the three entities and these overlapping roles have often compromised the transparency of the College's actions and operations.

Auxiliary Services Corporation

The "contract agreement" between the College and the ASC was amended in April 2013 and provides for an ongoing relationship between the parties with no defined term or end date. Among other things, the agreement grants the ASC permission to operate auxiliary services such as the bookstore, on-campus vending, concessions, coffee shops and food service facilities on College premises. Additionally, the ASC acts as the custodian and has fiduciary responsibility for all student activity fees collected by the College. During 2013-14, the College collected and remitted more than $1.5 million in student activity fees to the ASC. Although the agreement requires the ASC to perform certain functions, the agreement is not sufficiently detailed to provide a means for the Board to evaluate ASC's performance of those functions or to ensure student activity fees are used as the Board intended or in the students' best interest.

Student Activity Fees – The College imposes a mandatory[16] student activity fee on all full-time and part-time students[17] but students are not provided with a written description regarding the fee's purpose or intended use. The Board has adopted several policies relating to student activity fees, but the College lacks a clear and comprehensive written policy governing the administration and use of these fees. Instead, it appears that the fees are administered and used in accordance with various provisions found in Board-adopted policies, the contract agreement between the College and the ASC, and the ASC's bylaws. However, these documents are not readily available to or provided to students. Although one of the Board's policies explains the purpose of the fee in general terms,[18] the policy does not clearly define what a student activity entails or detail the manner in which student activity fees will be used.

In accordance with Board policy and the College's agreement with the ASC, the student activity fee is imposed at the time of registration, collected by the College and remitted to the ASC. During 2013-14, the College remitted more than $1.5 million in student activity fees to the ASC to be distributed to various clubs and organizations in accordance with the agreement. The agreement states that "all activity fees collected by the [ASC] under the provisions of this contract are to be expended for the benefit of the College community" as described in 21 categories of expenditure. However, the agreement does not specify how or by whom the fee is to be allocated among the 21 expenditure categories.

Although not binding on the College, the manner in which the student activity fees are to be allocated among the different expenditure categories appears to be addressed by a provision of the ASC's bylaws. These bylaws provide that "[t]he Activity Fees collected yearly from all students shall be allocated by the Student Activity Fee Allocation Committee (Committee) for the purposes that are in accordance with the SUNY Student Activity Fee Guidelines"[19] (SUNY Guidelines).

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16 All other fees except the technology fee are considered service fees which can be waived if the student does not receive the related service.

17 Although we are not aware of any statute pertaining specifically to the imposition of student activity fees by community colleges, we note that a SUNY regulation relating to community colleges' internal business practices provides that "student activity programs and fees" are matters for local college trustees' determination. Based on this regulation, we determined for the purposes of this report that the College has authority to impose a student activity fee. The student activity fee assessed during 2013-14 was $70 per semester for full-time students or $5 per credit hour for part-time students.

18 The fee's purpose is described as being "to support co-curricular and out-of-classroom activities which provide intellectual, social, cultural and leadership opportunities, as well as support services, which assist in student persistence and are an integral part of the mission of Erie Community College."

19 The SUNY Student Activity Fee Guidelines appear to apply only to "State-Operated Campuses," not community colleges.

Although not exactly clear, the Committee appears to be the "Student Activities Fee Allocation Board" established by Board policy.[20] Further, the SUNY Guidelines do not expressly permit a mandatory student activity fee to be used for six of the expenditure categories specified in the College's agreement with the ASC.[21]

In accordance with Board policy, the Committee recommended a 2013-14 fee allocation schedule for student activity fees which was approved by the Board on May 29, 2013. During 2013-14, the ASC distributed more than $1.5 million in student activity fees in accordance with this schedule. However, we have concerns with two of the approved allocations. Approximately $234,000 (15 percent of the total student activity fees) was allocated to the ASC to support the operation of its childcare centers[22] and another $24,000 (1.5 percent of the total fee) was remitted to the Foundation to support alumni activities. Because only 90 percent of the spots in the ASC's childcare centers are reserved for the children of students and tuition rates are not based on actual costs, there is a risk that the student activity fee could be used to subsidize childcare for non-students (e.g., faculty). Similarly, it is unclear how current students paying the fee benefit from alumni activities. Moreover, although the agreement between the College and the ASC authorizes the ASC to use student activity fees for childcare programs and alumni activities, the SUNY Guidelines do not expressly permit mandatory student activity fees to be used for these purposes. To the extent that the Board relies on the SUNY Guidelines for authority to impose the student activity fee, the Board should adopt a formal policy to ensure that the College complies with those Guidelines.

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[20] The stated purpose of the policy is to "establish a College-wide Committee that will, on an ongoing basis, review student activity fees and their percentage breakdowns for the institution." The board or committee established by the policy comprises students, faculty members and ASC administrators. The policy requires the board/committee to meet at least once every two years to re-evaluate and recommend the "student activity fee structure" ultimately to the appropriate subcommittee of the College's Board for its review and approval. Once approved, the "fee structure" remains in place for a three-year period.

[21] The six expenditure categories specified in the College's agreement with the ASC which SUNY Guidelines do not expressly permit a mandatory student activity fee to be used for are: (1) campus childcare programs, (2) support for campus alumni activities, (3) support for college commencement programs, (4) career placement activities, (5) college honors programs and (6) stipends to student officers for service to student government and publications.

[22] The ASC operates a childcare center on each campus for the children of students, faculty and staff. The primary purpose is to serve student parents: 90 percent of the spaces are allotted for students and the remaining 10 percent for faculty, staff or community. Most students are eligible for subsidies provided through SUNY Block Grants to assist them with childcare tuition at all three centers. The subsidies are based on income eligibility guidelines, and the need for the subsidies far exceeds the grant money available, so the ASC offers additional student subsidies made from the student activity fee allocation.

Without a clear and comprehensive written policy or adequate fee description, the College cannot clearly communicate to students the fee's purpose and students cannot determine how the fees will be used to benefit them. The Board should ensure its written policies clearly communicate to students the manner in which fees shall be used. To do otherwise undermines the transparency of the Board's actions in this regard.

Excess Student Activity Fees – The agreement between the Board and the ASC states that when fees allocated to a particular club or program are not fully expended in a given fiscal year, the remaining balance shall be retained for use by that program in subsequent years. Three clubs had not fully expended their allocated fees during 2013-14. Specifically, Student Government received 18 percent of student activity fees, or $280,479, and had a remaining cash balance of $334,433, which was 119 percent of its allocation. Student Athletics received 46.25 percent of student activity fees, or $720,674, and had a cash balance of $213,044, which was 30 percent of its allocation. Publications received .50 percent of student activity fees, or $7,791, and had a cash balance of $83,638, which was almost 11 times its allocation. Although these clubs had minimal income from other sources, 98 percent of their 2013-14 revenue was from student activity fees.

When the Committee last met in March 2013 to develop the 2013-14 fee allocation schedule, the Committee did not take minutes to document its proceedings or discussions. According to the ASC's Director and President, the Committee is provided with information regarding the unexpended balances of the programs receiving allocations and considers it when deciding how to best allocate these funds. The Committee did not reconvene to develop a 2014-15 fee schedule. Therefore, the 2013-14 fee allocation schedule was being used to allocate the 2014-15 student activity fees, despite the large cash balances of the clubs noted above.

Although the Committee could recommend reducing the allocation percentage for clubs or programs with large unexpended balances, it lacks the authority to reduce the actual fee assessed upon students each semester. The Board could take action to reduce the student activity fee and thereby reduce the burden it places upon students. However, the Board is not provided with the information necessary to assess the appropriateness of the fee being currently charged to students. The ASC does not provide the Board with detailed financial reports showing the amounts allocated to each club or the amounts expended or remaining at year-end. Without that information, the Board cannot knowledgably determine the appropriate level of the fee.

Financial Support – The College does not provide significant financial support to the ASC other than student activity fees allocated for administrative costs. During 2013-14, the ASC was allocated approximately $83,000 (5.3 percent of the total student activity fees). Additionally, the ASC receives an indirect financial benefit from the College because it is allowed to operate various ventures and generate revenue on College premises without paying rent or utilities. The College has granted ASC permission to operate bookstores, vending and food service operations, and childcare centers on each of the three campuses. These operations allow ASC to be self-sufficient[23] by generating operating revenues sufficient to cover operating costs. The ASC's resulting net profits are controlled exclusively by its Board.

Capital Contribution – In accordance with the agreement between the ASC and the College, the ASC is required to provide the College with minimal financial support in consideration of being allowed to operate on College premises. The most recent version of the agreement, as "restated" in 2013, states that "in consideration of said licenses and permission," the ASC will spend a minimum of $25,000 each fiscal year on "capital improvements, acquisition of equipment items, or such other category of expenditure." According to the ASC's Director, the ASC's Board has always considered ASC equipment purchases and capital improvements as a fulfillment of this requirement, because the ASC exists solely for the benefit of the College. During 2013-14, the ASC spent $25,204 to purchase various pieces of equipment for the ASC business office, food service and childcare centers.

It is not clear whether these purchases truly satisfy the contractual obligation because the equipment purchased was for the ASC; as such, the College did not directly benefit. Furthermore, the College Board was not afforded an opportunity to submit recommendations to the ASC for the contribution as stipulated in the agreement, and the Board was not provided with information regarding these expenditures. The ASC's President stated that the only financial information or reports provided to the College Board are the ASC's audited financial statements. Although the audited financial statements include a note disclosing that the ASC has satisfied its contractual obligation to the College, no details regarding the expenditures are provided. Therefore, the audited financial statements do not provide sufficient information to enable the Board to determine whether the ASC has fulfilled its financial obligation to the College.

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[23] According to ASC's audited financial statements, ASC's primary source of revenue is from the sales of merchandise and food (96 percent) and fees collected from students by the College (4 percent). For the fiscal year ending August 31, 2014, operating revenues totaled approximately $2.1 million and operating expenses totaled $1.9 million.

Year-End Cash Balance – The agreement limits the amount of unrestricted[24] cash that the ASC can have at year-end to $750,000. When the cash balance exceeds the stipulated maximum, the ASC is required to submit a detailed plan to the College indicating how the cash balance will be reduced to the $750,000 limit.

In April 2014, the ASC transferred $252,842 to the College to reduce the unrestricted cash balance to the contractual limit. The ASC Board approved the transfer, stipulating that the funds could only be used to support a capital project at the North Campus. Although the transfers were approved by the ASC Board, a detailed plan was not submitted to the College and there was no record indicating that the College Board was made aware of the transfer. The transfer of these funds from the ASC to the College was not handled in a transparent manner, and the CFO may have been the only individual at the College aware of these transfers or their intended purpose.

Had the ASC submitted a detailed plan to the Board as required, the Board may have had an opportunity to discuss with the ASC how these funds should be used. Furthermore, there is no written agreement between the College and the ASC documenting the ASC Board's intentions or restriction for these funds. Therefore, there is a risk that these funds could be used in a manner other than what was intended.

The CFO told us that the funds have been set aside in a restricted capital account to cover the College's share of a capital project and reported as a liability on the College's balance sheet. Since September 2010, the ASC has transferred over $1 million to the College in support of the capital project. The CFO stated that there were no Board authorizations or approvals accepting the transfers, but he has provided periodic verbal updates to the Board regarding the College's progress toward reaching the College's match for the project. However, the CFO's updates were not documented in the Board minutes. Further, it is unclear whether the ASC should be providing financial support to the College for capital projects because SUNY Guidelines[25] applicable to State-operated campuses specifically state that auxiliary service corporations shall not finance campus capital construction projects not included within the space made available to the corporation.

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[24] The unrestricted cash balance excludes cash balances being held in trust for student organizations, clubs and programs.

[25] SUNY has adopted written policies and guidelines for the proper administration and operation of auxiliary service corporations for State-operated campuses. Although the SUNY Guidelines do not apply to the ASC because the College is not a "State-operated campus," the College is a part of the SUNY system and it would seem that the same policy considerations underlying the guidelines should also apply to auxiliary services corporations established for county-sponsored community colleges.

Erie Community College Foundation

The Foundation is an independent not-for-profit entity that has a contractual relationship with the College. The Board entered into a five-year agreement with the Foundation in August 2013. In accordance with this agreement, the College provided the Foundation $290,000 in direct and indirect financial support during 2013-14. The agreement broadly stated the Foundation's described goals and objectives. The agreement primarily charged the Foundation with a responsibility to solicit financial support for the College and to develop and manage alumni relations. However, the agreement does not provide sufficient detail of the activities the Foundation will engage in or how delivery of services will be measured. Therefore, the Board cannot adequately monitor the Foundation in carrying out its contractual obligations.

Financial Support – The Foundation relies heavily on the College for financial support and also receives financial support from the ASC. Although the agreement between the College and Foundation clearly stipulates that the College will pay for the Foundation's operating costs, the agreement provides no means to measure or monitor service quality or to ensure the services provided justify the cost of doing business with the Foundation. Further, the exact cost of the Foundation's services is not readily apparent as the agreement simply provides that the College will pay the Foundation's operating costs in exchange for services rendered. However, operating costs are variable and not within the College's control and could vary significantly from one year to the next.

The College provides employees to staff the Foundation without charge and pays the Foundation's general operating costs including printing, supplies and postage expenses. During 2013-14, the salaries/wages, payroll taxes and benefits of the employees staffing the Foundation totaled approximately $255,000, and the Foundation's other operating expenses totaled $12,500. The Foundation operates out of 1,563 square feet of office space on the premises of the College's City Campus and, under its agreement with the College, is not required to pay rent or contribute toward the cost of utilities, maintenance or insurance. Based on the average rental rates for office space in the City of Buffalo, the annual rental value of that office space is approximately $22,800.[26] Therefore, the total value of the financial support provided by the College to the Foundation during

[26] In the notes to the Foundation's audited financial statements, the external auditors estimated that the value of the office space used by the Foundation was $11,852. However, the external auditors could not support the estimate quoted, and College and Foundation officials maintained no data regarding the approximate value of the space utilized. The average asking rental rate per square foot per year for office properties in the City of Buffalo as of March 15, 2015 was $14.58 or nearly twice as much as the amount utilized in preparing the Foundation's financial statements.

2013-14 totaled more than $290,000. In addition to this contractual financial support, the ASC distributes to the Foundation approximately $24,000 in student activity fee revenues which are used to finance alumni activities.[27]

Generally, the Board has the authority to enter into written contracts for services and compensate for those services provided. In this case, the Board has entered into an agreement with the Foundation whereby, in exchange for certain services, the College pays the Foundation's operating expenses. Although the agreement stipulates how the Foundation will be compensated, the amount of compensation can vary significantly and is, to a great extent, out of the College's control. However, the College could not demonstrate that it had ever performed a cost benefit analysis or considered limiting the amount of compensation that it provides to the Foundation to ensure it was in line with, or at least justified, the cost of doing business with the Foundation. Written service agreements should clearly define the contractual relationship and responsibilities of each party including the cost of services.

<u>Pouring Rights Revenue and Discretionary Account</u> – The ASC has an agreement with a soft drink company whereby the ASC collects commissions on vending machines and pouring rights[28] revenues from serving the company's products in the cafeterias. Each year, the ASC remits $38,840 of its pouring rights revenues to the Foundation. The Foundation uses these funds to provide the President with a "discretionary" spending account for expenses not included in the College's operating budget. The Foundation Director provided us with a detailed cash disbursement report showing payments totaling approximately $33,400 issued from the President's discretionary account. We noted[29] numerous reimbursements to the President and payments to vendors for dues, dining, banquets and entertainment. During 2013-14, the reimbursements to the President totaled approximately $9,500 and included a $4,000 reimbursement for catering services at the President's holiday party. Additionally, we noted payments totaling approximately $7,400 to a private club for the President's membership dues, fees and banquet services.

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[27] As noted previously, we have concerns with the student activity fee being used to support alumni activities.

[28] The exclusive rights of a beverage maker or distributor to have its products sold at particular venue, event or institution.

[29] The Foundation's records and operations were outside the scope of our audit; therefore, we did not verify the accuracy or completeness of the data provided in the cash disbursement ledger.

According to the ASC President, the prior College President started the practice over 10 years ago. Prior to remitting the funds to the Foundation, ASC would pay a portion of the President's discretionary costs for entertaining and promoting the College. However, the ASC Board felt conflicted about paying for certain types of expenses. As an example, the ASC President cited expenses for alcohol. Therefore, the Foundation took over paying for these expenses. The ASC President stated that the former College President may have discussed this with the Board Chairperson, but the discussion was not documented in the minutes and there was no College or ASC Board resolution documenting the decision. According to the ASC President, the rationale for sending the money to the Foundation was not only to provide continued funding for the President's discretionary spending, but also to increase Foundation revenues. He explained that, by increasing the Foundation's revenues, it would appear that the Foundation was generating more income than it actually was and make it appear to be a viable functioning program.

<u>Gifts and Donations</u> – The agreement requires the Foundation to "process, record, acknowledge, and report all gifts to the College." Although the Foundation generally reports gifts to the College President, it does not report all gifts or donations to the College Board. We identified[30] monetary gifts, donations or contributions totaling $303,683 that were received by the Foundation on behalf of the College during 2013-14 but were not reported to the College Board.

According to the Foundation Director, he had not interpreted the agreement's provision to mean that all gifts had to be reported to the College Board. He stated that only gifts of equipment donated for use by College academic programs are reported to the Board. He explained that, "all gifts of $500 or more are reported to the College through the Office of the President via acknowledgment letters for his signature on behalf of himself and the College trustees. This also extends to gifts from all College personnel, College trustees and Foundation directors regardless of the amount." The President's Office had no documentation to demonstrate that he had been informed of two monetary donations totaling more than $154,000.

Although it appears that the Foundation Director is generally reporting gifts or donations to the President, the Board is not being informed of the substantial amount of gifts and donations the Foundation is receiving on the College's behalf. The Foundation's primary function is to solicit gifts, grants and donations to be used to benefit the College. However, the Board is not being provided with adequate

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[30] All gifts, donations and contributions were identified using tax forms filed by the Foundation with the Internal Revenue Service for reporting purposes.

information to evaluate the Foundation's effectiveness in the pursuit of this goal. Furthermore, the Board is not provided with sufficient information to determine how these gifts are being used to benefit the College, because all expenditures are made at the sole discretion of the Foundation Board without consulting the College Board. The College Board has essentially delegated to the Foundation most, if not all, of the College's rights to receive and manage philanthropic gifts and donations.

<u>Monitoring and Oversight</u> – The agreement provides no means to evaluate how well the Foundation is carrying out its contractual obligations to the College or to ensure the services provided justify the cost of doing business with the Foundation. Furthermore, the College Board is not provided with adequate financial reports or other information to monitor the Foundation's compliance with and fulfillment of the terms of the agreement. According to the Foundation Director, no written financial reports are provided to the College Board. The Foundation Director provides periodic verbal updates to the College Board which are very general in nature and pertain to general news and planned events. The audited financial statements are submitted to the College's finance department and presented to the Foundation's Board[31] but are not presented to the College's Board.

During 2013-14, the Foundation provided support or services to the College with an approximate value of $502,000. These services included providing $247,364 in scholarships; spending $142,290 on capital improvements at the North Campus; and providing the College with $112,239 in support of educational programs through equipment donations, grants and student assistance programs. The Foundation is also responsible for handling alumni functions and managing the College's relationship with its alumni. However, the Board is not provided with written reports or any information to monitor the Foundation's progress and efforts in enhancing or expanding alumni relations.

Although it appears that the Foundation is providing the College with sufficient support to justify the cost of its operations, the Board did not have sufficient information on which to base decisions or properly monitor contract compliance. As a result, the Board did not properly monitor the Foundation, thereby diminishing its ability to properly protect the College's interests.

Recommendations

The Board should:

17. Ensure that written agreements with affiliated entities stipulate how performance will be measured and evaluated.

[31] The Foundation Board includes one member who also serves as a trustee on the College Board.

18. Adopt a formal comprehensive policy specifying the purposes for which the student activity fees may be used and the process for allocating the fees among those uses.

19. Review student activity fee allocations provided to and used by clubs and organizations at least annually to determine whether the amount of the fee is appropriate and necessary.

20. Establish clearly defined and measurable goals and objectives for evaluating the performance of affiliated entities.

21. Review audit reports, periodic financial reports and other interim reports necessary to evaluate the activities and performance of affiliated entities in pursuit of stated goals and objectives.

22. Require affiliated entities to provide adequate documentation regarding their key activities and contractual obligations.

APPENDIX A

RESPONSE FROM COLLEGE OFFICIALS

The College officials' response to this audit can be found on the following pages.

In their response, College officials referred to page numbers in the draft report. These page numbers have since changed upon the report's final formatting.

SUNY ECC ERIE COMMUNITY COLLEGE
STATE UNIVERSITY of NEW YORK

Sent by hand delivery and email to Muni-Buffalo@osc.state.ny.us

December 23, 2015

Jeffrey D. Mazula,
Office of The New York State Comptroller
Division of Local Government and School Accountability
Chief Examiner
295 Main Street
Suite 1032
Buffalo, New York 14203-2510

Re: Response to OSC Draft Audit Report

Dear Mr. Mazula:

This letter is written in response to the Office of the State Comptroller (OSC) Report of Examination relating to the SUNY Erie Community College (ECC) Board Oversight and Management of College Resources. According to the OSC pamphlet "Responding to and OSC Audit Report," the purpose of this response letter is to respond to the draft findings and recommendations. It is also an opportunity to provide information to allow OSC to correct any inaccuracies in the report before it is finalized.

As you may know, I have been the Chair of the ECC Board of Trustees (BOT) for the period examined in the audit of September 1, 2013 through July 2, 2015. I was not interviewed for any part of your audit and have not participated in the process prior to the OSC issuing its Draft Report. On December 21, 2015, 28 days after the Draft Audit Report was issued, I met with Principal Examiner [redacted] of your office. Today, the question of "who should have contacted who" is of no moment. Had there been contact between the OSC and the Board, we would have happily communicated that upon a cursory review, we agree with several of the recommendations, including those regarding public transparency. We are already well into the process of improving our Board operations on a number of levels that will be described below.

See Note 1 Page 51

Despite our surprise regarding the scope of the audit and some factual differences we have with the draft report, we welcome the OSC Report and assure you that we take each issue raised very seriously. It is our intention to fully explore every issue and, when necessary, take corrective action where authorized.

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Before summarizing our positions with respect to some discreet areas of the audit, I would like to briefly outline our plan moving forward. BOT Vice-Chair Dennis P. Murphy has agreed to take a lead role in forming a working group to perform a comprehensive review of every issue contained within the audit. This Corrective Action Plan (CAP) Working Group will fully examine each of the 22 OSC recommendations and will respond with a CAP which will be presented to the Board of Trustees for adoption before it is submitted to the OSC.

RESPONSE

ECC is accredited by the Middle States Commission on Higher Education (Middle States). Middle States is an institutional accrediting agency recognized by the U.S. Secretary of Education and the Council for Higher Education Accreditation. The Middle States accreditation is critical to ECC.

ECC is a SUNY College. Section 604.2 of the SUNY regulations (cited by the OSC Report) outlines the responsibilities and duties of college trustees. It states in pertinent part,

> Under the time-honored practice of American colleges, trustees of colleges, as legal official bodies corporate, *concentrate on establishing policies governing the college, and delegate responsibility for the administration and execution of those policies to their employed professional administrators*. The college trustees, subject to the approval of the State University trustees, shall appoint a president (whether permanent, acting, or interim), approve curricula, prepare, approve and implement budgets, establish tuition and fees (within legal limits), approve sites and temporary and permanent facilities. (emphasis added)

This regulation describes a policy governance model.

ECC was initially informed of the OSC audit in an engagement letter of September 30, 2014. That letter stated "the audit will focus on evaluating College operations." In accordance with the requirements of our Middle States accreditation and section 604.2 of the SUNY regulations, the ECC Board of Trustees (BOT) is not an "operations" board, rather a "policy governance board." The BOT appoints the President, sets a budget and is responsible for the college's long term strategic planning and assessment. The day to day college operations fall to the President and Senior Executive Staff (SES). This is not a matter of opinion: it is a requirement for ECC to retain its standing as a Middle States Accredited Institution. Therefore, most Trustees, while aware of an audit "evaluating College operations," did not perceive that this was an audit of the BOT itself. Had we been made aware that the OSC perceived operations to be a BOT function, we would have immediately clarified this for you and would have engaged in the audit process. Instead, we left communication regarding the audit to the President and SES.

See Note 2 Page 51

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As a result, we were a bit surprised when we received the draft audit report and learned for the first time that an OSC audit evaluating "College operations" included in its scope and objective "Board oversight and Management of College resources," as we had never been informed of this or contacted by the OSC during its review prior to receiving the OSC Draft Report dated November 23, 2015.

See Note 2 Page 51

The Report addresses the following areas:

- Hiring and salaries
- Procurement of professional services
- Oversight of contracts with the ECC Foundation and the Auxiliary Services Corporation.

Brief Background of the ECC Board of Trustees

I believe it would be helpful to provide some background on the BOT, including its history and reputation in the community, before addressing specific issues in the Draft Report.

The ECC Board of Trustees consists of ten (10) members, to wit:

- One (1) student trustee, elected by the students
- Five (5) appointed by Erie County Executive
- Four (4) appointed by the Governor of New York

The student Trustee traditionally serves one year after being elected President of the Student Government Association. Government appointees serve seven year terms. Nine of our 10 Trustees are serving their first term.

While the current BOT operates in a manner that is a departure from past ECC Boards, we operate in an atmosphere that was designed by our predecessors. Over the years there have been many ECC Alumni, supporters and other community leaders who have served on the ECC BOT. Several professionals and business leaders have selflessly given their time, talents and treasure to support ECC in the non-paying position of Trustee. Unfortunately, the history of our BOT also includes Trustees who have acted with their own political and self-interests at heart.

In the early 2000's, BOT members were intimately involved in the day-to-day operations of the college. During that period, monthly board meetings turned the board room into a political patronage trading post. BOT members routinely took part in executive sessions that lasted for several hours battling over job appointments. To this day, ECC's current employee roster is littered with personnel who share last names with past Trustees as well as current and former local elected officials. Board involvement in the hiring practices at ECC was a contributing factor in the college being placed on Probation by Middle States.

Political operatives – sitting as Trustees – vied for the affections of local unions, negotiating sweetheart deals and making long term commitments that ceded control away from management. To this day, these long term commitments must be funded by students and taxpayers. As an example, ECC has a hiring committee for new professor hires. This committee has six members that make a recommendation on every academic hire. Under a former contract "negotiated" by the BOT, the faculty union held all six seats and thus had complete control over every hiring committee. Management could not participate. As of the signing of our new Faculty Federation contract last month, management will now have two seats on the hiring committee. The union still holds a majority. The new 6-2 union advantage was actually a concession by the faculty union in the negotiation, as a prior BOT had given the union every seat. While the current BOT has attempted to bring some equality to this situation, the union still retains majority control of the committee and has the right to caucus separately with its six members.

When I was appointed by Governor David Patterson in July of 2009, a handful of BOT members were in the early stages of the long process of transitioning away from being a body primarily concerned with political patronage and operational control and toward a more appropriate policy governance model. This transition was precipitated by a warning Middle States had issued to ECC, stating that the college was in danger of losing its accreditation. I personally met with senior Middle States officials during their last visit to ECC. The message from Middle States was – and is – clear: ECC will not keep its accreditation if BOT members attempt to run the operation and interfere with the work of the President and SES.

The goal of our current BOT is to ensure that every decision places the interests of the students and the taxpayers ahead of any political or self-interest and that our decisions be driven by data and facts.

BOARD OVERSIGHT

The Report states in part: *"The Board has established a lax control environment and has allowed management to assume Board responsibilities."* **Later it states**: *"In many regards, the Board has taken a passive role and yielded much of its rightful decision-making duties and authority to the College President. The President and other College officials have been allowed to act independently of the Board."*

As set forth above, there seems to be a complete disharmony between the OSC understanding of appropriate BOT responsibilities and the "policy governance" model (required by Middle States and authorized by New York State Education Law) that the BOT has attempted to follow. This is not a criticism of OSC. Rather, we acknowledge that many BOT policies, designed and evolved over many years, are no longer appropriate given the manner in which a transparent policy governance board should operate.

A little more than a year ago, it was determined that the then existing BOT Bylaws and Policies were antiquated. As Chair, I established the Ad Hoc Committee on BOT Bylaws and Policies to revamp both documents and bring them into alignment both with objective modern thought and with the requirements of Middle States, SUNY and the Education Law. The bylaws and policy manuals are two separate documents. The work of this committee has been cumbersome due to the voluminous nature of the old bylaws and policies. It was decided to address the bylaws first before beginning work on the policy manual.

This has been very active committee, and in May of 2015 the new set of BOT Bylaws was adopted by the BOT. These bylaws were a complete overhaul from past versions that were not only outdated, but also replete with remnants of the vitriol and pettiness of past boards.

The 199 page set of BOT Policies are similarly defective. The Ad Hoc committee has now turned its attention to creating a new set of policies that aligns with the "policy governance" model required by Middle States and SUNY regulations. We concede that the BOT has moved to policy governance ahead of the adoption of a new set of policies. This was necessitated by Middle States' warning to ECC that it would not keep its accreditation if the BOT continued to operate in its prior manner. It is respectfully submitted that blindly following the antiquated policies that had facilitated the abuse undertaken by former BOT would neither meet our Middle States Requirement nor serve the students or taxpayers.

The Ad Hoc Committee on Bylaws and Policies is now in the process of establishing a completely new policy manual. Like the new bylaws, the goal of the new policy manual is to set policies that align with the requirements of a Middle States Accredited College. There is a very real possibility that a new set of policies could be in place before the CAP is submitted to OSC.

The Report states in part: "We found numerous control weaknesses over payroll processing and the maintenance of leave records."

While the audit report makes no allegation of any wrongdoing, this criticism over control weaknesses is one that the BOT recognized prior to the audit report. While the OSC report makes no mention of it, ECC payroll is still done manually. Handwritten time sheets are submitted to payroll and processed by non-management employees. The only control over this antiquated system is the honor system.

This past spring, I conducted an informational session with nearly every member of the Erie County Legislature. The point of the meeting was to explain that ECC needs a new Enterprise Resource Planning (ERP) solution to, inter alia, allow better control over Human Resources and payroll management.

It had already been determined by the BOT that new ERP is necessary to move the ECC payroll department into the modern age and allow it to operate in manner consistent with the best practices of other institutions of its size. I formed and chair the Ad Hoc Committee on

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Technology, which has met at least 10 times since the summer of 2015. To explore our technological options, we have interviewed officials at colleges from across the country that use more modern systems. We have invited a top vendor from the ERP field to make a presentation to the BOT at our January of 2016 meeting. Implementing a new ERP will be costly. but it is a priority of this BOT to continue its efforts to address our HR and payroll control weaknesses.

EXECUTIVE SALARIES AND BENEFITS

The Report states in part: "*The Board should authorize and approve all salaries and wages paid to employees, as well as any benefits provided to them.*"

We agree that SUNY regulation 604.2 requires the BOT to approve salaries and appointments. The regulation indicates that this process is to be done following a recommendation by the President. The role of the Board is one of oversight and should not be one that is over reaching. The BOT is regularly presented with information regarding the role of all new positions and salaries and why the Administration felt they were justified. There was Board oversight. Under the Open Meeting Law, personnel matters such as these are discussed in executive session. Executive sessions are closed to the public and therefore not documented in the minutes. The CAP Working Group will explore this issue to determine if more rationale for hires and pay changes can and should be memorialized in the BOT minutes.

The salaries and benefits for most of the College's full-time employees have been established by collective bargaining agreements. Approximately 98% of the positions and 97% of the salaries are covered by collective bargaining agreements. The OSC audit only reviewed a very small population of employees. Individuals working in SES titles are not covered by the College's four collective bargaining agreements.

The Report states in part: "*We reviewed the salaries and leave benefits provided to all senior executives on the payroll during the period September 1, 2013 through February 20, 2015 and found that salaries and benefits had not been authorized or approved by the Board.*"

SES salaries were routinely reviewed and discussed as part of the annual budget subcommittee process. Salaries and position counts were included in the BOT approved budgets and were a normal part of the County's review and questions to which the College responded. Not counting five to six monthly Financial Health Sub-Committee meetings, the ECC budget includes five separate reviews and approvals –

- BOT
- Erie County Executive
- Erie County Legislature
- SUNY
- Erie County Fiscal Stability Authority (review and comment only)

SES salaries are reviewed and approved multiple times as part of the budget approval process.

The Report states in part: "*From September 9, 2010 through February 20, 2015, the President created 10 senior executive positions with salaries totaling $801,000 annually. Although the Board approved the creation of most of these positions, the rationale for approving these positions and the related salary information were not documented in the minutes as required by Board policies.*"

In reviewing the actual hires, there were *technically* 10 new SES *titles* – not actual new *jobs* –created during the 4 ½ year period reviewed. This number is misleading because four of those titles were filled by existing employees moving from one title (which was eliminated) to a newly created title. They were not new hires. The full time position count actually increased by 5½. The ½ position was a part time position prior to the scope period, which then became full time. The total for the 5½ actual new positions (versus the 10 titles noted by the audit report) is $555,300.

See Note 3 Page 51

There was significant discussion between the BOT, President and SES when these positions were being created. Much of that discussion occurred in executive session because it involved personnel matters. Minutes of executive sessions are not kept due to the confidential nature of such sessions. As a result, the BOT minutes do not always reflect that there was significant BOT discussion and oversight with respect to job creation. All SES appointments appeared in the Personnel Agenda approved by the BOT, which was made a part of and attached to the official minutes.

The BOT policy that is referenced in the audit is from 2003 – a time when the former BOT was so involved in hiring decisions that it was criticized on multiple occasions by Middle States. Both the 2002 and 2006 Middle States' reports advise ECC that decision-making authority for all full and part-time appointments should become the responsibility of the President. Middle States urged the BOT to be less involved in day-to-day management, especially in the area of personnel. Given that Middle States' concerns appeared valid (because the prior system of extensive BOT involvement led to abuse by some Trustees), it is respectfully submitted that it was proper to follow Middle States recommendation that ECC's BOT become a policy making Board and not act as day-to-day managers. The regulations and Education Law also are replete with references to the BOT's role as policy makers and set forth the BOT's ability to delegate these responsibilities and day-to-day management to the President of the College as the Chief Executive Officer.

The CAP Working Group will examine this issue and more fully respond when its process is complete. Based on this preliminary review and my personal involvement with the BOT, any issue appears to be related to proper documentation of functions performed by the BOT, not to a failure of the BOT to perform them.

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Salary and Benefits

The Report states in part: "*The President directed the Payroll Supervisor by email to make questionable compensation payments to two executives totaling $77,000.*

Having discussed this issue with staff, we respectfully question whether there was anything questionable about the payments. According to staff, all additional compensation was paid with the full knowledge and authorization of the President and actually represented a significant cost savings to ECC.

In the case of the Associate Vice President of Information Technology, this individual took on additional duties that were well beyond the scope of his job title. This allowed the college to delay having to fill several positions for many months, if not years. Some of the additional responsibilities included acting as the Director of Admissions and Call Center Operations, supervising the interface with Admissions, leadership of Institutional Research, creating and managing IRAAPP (Institutional Research Assessment Accreditation and Planning), supervising recruitment activities and general oversight of student services during periods of time when the Executive Vice President position was vacant. This individual was also a key person involved in the recent successful Middle States' visit.

In the case of the Vice President of Academic Affairs, the compensation payment of $2,500 was for exemplary and time intensive additional work regarding a Middle States' self-study and visit. The result of this work was that ECC was removed from Middle States' warning list. This Chair discussed the decision with several Trustees and directed the President to make this one-time bonus payment. The CAP Working Committee will closely examine this issue and determine a protocol for making such decisions and for recording them to ensure sufficient transparency.

All stipend payments were authorized in writing by email from the College President to the Payroll Supervisor.

The Report states in part that the President increased: "*the base salaries of all senior executives by 2 percent, totaling $27,000, without Board approval. The salary increase was never approved by the Board and was not clearly disclosed in other public documents or records such as the annual budget.*

While the report indicates that an email shows the past Chair was advised of this pay raise, the CAP Working Committee will closely examine this process and determine a protocol for making such decisions and for recording them to ensure sufficient transparency.

Additionally, in November, prior to receiving the OSC Draft Report, I began the process of forming a BOT Ad Hoc committee to review SES compensation and benefits. This committee has not yet met.

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The Report states in part: *"The President also directed the Payroll Supervisor by email to give his secretary and office assistant salary increases.*

The CAP Working Committee will closely examine this issue and determine a protocol for making such decisions and recording them to ensure sufficient transparency.

The Report states in part: *"The College's leave records also were inaccurate and had not been updated in a timely manner. As a result, two executives received overpayments totaling $5,285."*

Having discussed this issue with staff, we respectfully submit that this issue involves two employees. The first is a current employee who, when notified of this issue, immediately repaid the amount received in error. The second, a former employee, has entered into a repayment plan and has begun repaying the overage. The serious challenge associated with ECC's antiquated paper-based system of tracking employee payroll and leave records has already been addressed in this response.

The Report states in part: "leave balances were overstated by 580 hours (about 72 days) with a value of approximately $25,000."

Both of the above two points underscore the insufficiency of ECC's current Human Resources and payroll systems, and the need to invest in a new ERP. With an automated, fully integrated system, manual processes will be eliminated and built in audit functions will generate error reports, resulting in immediate corrective action.

In the meantime, the CAP Working Committee will closely examine this issue and recommend a protocol to avoid such problems before a new ERP is established.

PROCUREMENT PROPOSALS

The OSC Report raises no questions of any irregular payments. OSC has issued three recommendations to the College and two to the BOT as follows:

College officials should:

12. Procure professional services using a competitive method such as an RFP process.

13. Review documentation to verify that they have obtained State contract pricing.

14. Require that professional service providers submit documentation that includes the dates and services provided before authorizing payment.

The Board should:

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15. Consider amending the procurement policy to allow professional services to be procured from service providers who conduct business under a County contract. Any amended policy should include a requirement that purchasing officials verify the County's contract allowed the College's use, was bid and awarded in compliance with statute, and was procured using a competitive process.

16. Enter into written contracts with professionals to establish the services to be provided, the time frames for those services and the basis for compensation.

The Board passed a new procurement policy in June 2015. As set forth above, the BOT is already in the process of rewriting the Board Policies. The Ad Hoc Committee on Policy will be provided with these recommendations for consideration and guidance especially as it relates to consultants. I will direct the Ad Hoc Committee to work closely with the CAP Working Committee to fully explore the issues raised and the recommendations prior to making a policy recommendation to the full BOT.

Affiliated Entities

The OSC Report raises questions about the relationship between the College and its Foundation and the Auxiliary Services Corporation (ASC). Attached are two letters from the leaders of each of these entities describing their response to the Draft Report which are incorporated by reference herein.

The OSC has issued six recommendations to the BOT as follows:

The Board should:

17. Ensure that written agreements with affiliated entities stipulate how performance will be measured and evaluated.

18. Adopt a formal comprehensive policy specifying the purposes for which the student activity fees may be used and the process for allocating the fees among those uses.

19. Review student activity fee allocations provided to and used by clubs and organizations at least annually to determine whether the amount of the fee is appropriate and necessary.

20. Establish clearly defined and measurable goals and objectives for evaluating the performance of affiliated entities.

21. Review audit reports, periodic financial reports and other interim reports necessary to evaluate the activities and performance of affiliated entities in pursuit of stated goals and objectives.

22. Require affiliated entities to provide adequate documentation regarding their key activities and contractual obligations.

While the BOT appreciates the responses from the ASC and the Foundation, we do not simply adopt their views. The CAP Working Committee will independently review and fully explore the issues raised in the OSC Report, the responses from the leaders of the Foundation and the ASC, and the relationships between the College and these entities before completing an independent analysis of these corporate relationships.

Conclusion

The Erie Community College Board of Trustees is a volunteer effort by community leaders, Alumni and others who freely give their time for the betterment of the College,

It can sometimes be difficult to read, hear and accept criticism. There is no shortage of criticism in the OSC Report. However, we believe the OSC Report is in concert with a number of initiatives already being undertaken by this Board, including:

- Initiating a meeting of all Board Committee Chairs and staff members involved in the taking of minutes to improve the BOT Committee process.
- The adoption of a complete rewrite of the BOT Bylaws.
- The continued work to create a new set of BOT Policies.
- The adoption of a new procurement policy in June 2015.
- The push to modernize the Human Resources and payroll management systems,
- A continued commitment to a policy governance model and to limit inappropriate BOT interference and influence.

The work ahead in these areas and others contained within the OSC Report is significant. On behalf of the Board, I can assure you that as we move forward, we will treat this Report as an opportunity to improve the College and to better serve our students and the taxpayers of Erie County.

Very truly yours,

Stephen Boyd, Esq.
Chair - ECC Board of Trustees

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SUNY ECC
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Jack Quinn
President, Erie Community College
121 Ellicott Street
Buffalo, NY 14203

Dear President Quinn,

We appreciate the opportunity to review and respond to the sections of the audit conducted by the Office of the State Comptroller pertaining to the ECC Foundation. We participated in interviews with the auditor and are requesting that this communication to you be included in the College's response to the audit.

Page 7, 4th paragraph and Page 10, Recommendation 3: We appreciate the acknowledgement that the Foundation is a separate legal entity, incorporated as a 501(c)3 not-for-profit corporation with an independent Board of Directors who solely carry the legal and fiduciary responsibilities for the activities of the Foundation. Establishing an independent foundation is common practice at academic institutions to ensure that donor funds are not co-mingled with the college's operating funds and to ensure that the distribution of philanthropic contributions are always in compliance with donor intent.

Page 7, Footnote 4: The Foundation Bylaws were revised over the course of the summer to ensure that they accurately reflected current practice, be in compliance with the NYS Non-Profit Revitalization Act of 2013 and to align them, where feasible, with the recently revised and adopted Bylaws of the College Board of Trustees. In fact, two members of the Board of Trustees, at the request of the Foundation, assisted the Foundation Board in reviewing proposed revisions. The revised Foundation Bylaws were adopted on August 28, 2015. The revised Bylaws include the President of the College and the Associate Vice President for Advancement and Alumni Affairs as Ex Officio members of the Board. They have no voting rights and serve as advisors to the Board which is comprised of community and corporate leaders. We would be happy to provide the Comptroller's Office with a copy of the revised Bylaws.

Page 26, 1st paragraph: The Agreement between the College and the Foundation is purposely broad since it covers a period of five years during which college priorities and philanthropic opportunities are subject to change. The Foundation's Strategic Plan forms the basis for measuring specific goals and objectives adopted to advance the work of the Foundation and support college-identified programmatic or capital needs. In addition, the College President (Ex Officio) and at least one member of the Board of Trustees (voting) serve on the Foundation Board. The Trustees and college's leadership are made aware of Foundation activities and plans receiving verbal updates at the monthly Board

The Erie Community College Foundation raises funds for scholarships, faculty enrichment programs and innovative educational and workforce development initiatives. The Foundation supports alumni through special events, reunions and professional development.

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of Trustee meetings, and the current financial statements are provided to and discussed with Foundation Board members (which include the College President and at least one Trustee) at the Foundation's board meetings. In addition, the Foundation's Audit Committee Chair reviews and distributes the Annual Audit to all Foundation Board members.

Page 27, 3rd paragraph: Among the current members of the Foundation's Board, the longest serving have been Board members for nine years and the practice of an annual ASC contribution to the Foundation was well established when they joined the Board. While we can't comment on the history of this practice, it is important to note that the Foundation today holds $3.4 million in endowments and restricted funds; has received approximately $4,835,000 in contributions the past four years and annually distributes over $500,000 in scholarships and programmatic support. The annual contribution from ASC represents approximately 3.1% of the Foundation's overall activity during the last four years.

Page 28, 3rd paragraph: We find the statement "The Board has essentially delegated to the Foundation most, if not all, of the College's rights to receive and manage philanthropic gifts and donations" confusing especially in light of the acknowledgement that the Board "should ensure College officials maintain a separate and distinct relationship with…the Foundation at all times to ensure (that it) operate independently." The Foundation – like all academic affiliated foundations – was established by the Trustees to provide an avenue for philanthropic support that would provide resources that could not be provided through the college's operating and capital budget – either due to budgets inadequate to fund all the needs of the college and its students or because operating funds could not be utilized to benefit specific students or programs (scholarships, books, lab fees, etc. for students in need). A clear separation of authority between the Foundation Board and the Board of Trustees is required if the Foundation is to meet its financial and legal obligations to donors. The Foundation Board, in an effort to ensure transparency and Board-to-Trustee communication, added a seat to the Foundation Board to be filled by a Trustee in 2008. In addition, in the past 4 years, three members of the Foundation Board (two former, one current) have been appointed by the Governor or County Executive to the Board of Trustees bringing in-depth knowledge of Foundation activities and goals to the Board of Trustees.

Page 29, Recommendation 20: The Foundation will work with the college to ensure that philanthropic goals and objectives are included in the College's Strategic Plan and in *EEC Excels* to further enhance transparency and communication between the two governing bodies.

The Erie Community College Foundation raises funds for scholarships, faculty enrichment programs and innovative educational and workforce development initiatives. The Foundation supports alumni through special events, reunions and professional development.

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Page 29, Recommendation 21: The Foundation welcomes the opportunity to present to the Trustees, as part of the monthly board agenda, formal presentations (written and verbal as opposed to the verbal presentations that have been the standard) of monthly financials and to have the chair of the Foundation's Audit Committee or designated Board officer present the approved audit. In addition, the Foundation will provide a quarterly gifts report to be included in the Trustees board packets.

Page 29, Recommendation 22: In the past, the Foundation has relied on verbal communication to and with the Board of Trustees, inclusion of a Trustee on the Foundation Board and in various committees and projects to keep open lines of communication. The Foundation will soon produce and distribute the 2014-15 Annual Report that will be shared with all the Trustees and senior administrators of the College. The Foundation will also provide copies of board meeting minutes to be included in the Trustees board packets.

The Foundation appreciates the opportunity to provide clarification on certain statements within the audit and agrees that more formal documentation of activities to the Trustees will further enhance our efforts to provide much needed philanthropic support to the College's students, programs and facilities.

Respectfully,

Richard Mason Board Chair	Cynthia Schwartz Board Vice Chair
Robert Pollock, CPA Board Treasurer	John Schiavone, CPA Chair, Audit Committee

cc: Stephen Boyd
Michael Pietkiewicz
William Reuter

The Erie Community College Foundation raises funds for scholarships, faculty enrichment programs and innovative educational and workforce development initiatives. The Foundation supports alumni through special events, reunions and professional development.

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Of
Erie Community College, Inc

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Jack Quinn
President, Erie Community College
121 Ellicott Street
Buffalo, NY 14203

Dear President Quinn,

In response to those portions of the Office of the State Comptroller's audit that pertain to the Auxiliary Services Corporation of Erie Community College (ASC), we would like to submit the following comments to address certain of the assertions made therein, as well as recommendations made therein, and action plans designed to satisfy the recommendations:

Page 5, 6th paragraph, Page 10, Recommendation 3, Page 29, Recommendations 18 and 19:

The Auxiliary Services Corporation is a Not-for-Profit corporation formed and organized under New York law, and recognized as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code. The ASC is further recognized as a public charity, based upon its status as a supporting organization of the College, pursuant to IRC Section 509(a)(3). The ASC was formed at the instruction of the Erie County Legislature, the Local Sponsor of the college. The Legislature's authorizing resolutions mandated that the organization's Board of Directors be comprised of an equal number of representatives from the College's administration, faculty and student government, and that the organization provide auxiliary services to the College.

Among its designated responsibilities, the ASC acts as Independent Fiscal Agent for the College, maintaining the integrity of the internal control procedures for the disbursal of mandatory student activity fees. The College's direction to the ASC for distribution of mandatory student activity fees is limited to the ECC Policy V-D-3a which establishes a committee to review activity fees and recommend the activity fee structure to a subcommittee of the Board of Trustees for their review and approval. In addition, the purposes for which student activity fees may be used are specified in Article 8 of the Agreement between the Board of Trustees of Erie Community College and the Auxiliary Services Corporation of Erie Community College. ECC student leaders fill the majority of seats on the Activity Fee Allocations committee. The ASC Executive Director informs the committee members of the policies, purposes, and account balances applicable to each account funded by activity fees. The student members then convey this information to other representatives of the student body (SGA) in order to collectively and transparently determine the allocated uses of activity fees. Upon approval of the fee allocations, the ASC, under the leadership of the Executive Director, maintains independent fiscal control over the funds in accordance with the committee's directives.

The ASC concurs with the audit recommendation that approved allocations should be communicated to the student body via the ECC student portal, in order to ensure that all students, not just student leaders, understand the mandatory activity fees allocations, as well as the proposed uses of fees. The ASC also agrees that a more comprehensive written policy should be adopted by the College regarding the allocation committee's composition, purpose and method of operation, including provisions for documenting committee proceedings, to ensure greater transparency on the allocation of the fees. Although the ASC currently provides annual reports of activity fee allocations and account balances to campus groups using activity fee funding, the ASC will, as recommended, additionally provide an annual summary of such information to the ECC Board of Trustees for their review. Furthermore, the ASC Bylaws are currently under revision to eliminate the conflicting statement that refers to administration of the fees "in accordance with the SUNY Student Activity Fee Guidelines," as these guidelines apply only to State Operated Campuses.

Page 21, paragraph 2:

Although the Chief Administrative and Fiscal Officer (CFO) of the college currently holds the elected position of ASC President of the Board, the Executive Director of the ASC has primary responsibility for the day-to-day operations of the corporation. The Executive Director and the Financial Director of the ASC report results of operations to the nine member ASC Board whose meetings are documented in minutes that are open for review. The ASC Board's input is typically limited to budget and contract approval, appointing committees, amending by-laws, election of officers and hiring the Executive Director who is responsible for the establishment and oversight of policies and the day to day operations. All Board actions require at least a majority of the members of the Board, thereby limiting the extent of authority any one member might possess.

Page 23, paragraph 1:

The assumption that "because only 90 percent of the spots in the ASC's childcare centers are reserved for the children of students, there is a risk that the student activity fee is being used to subsidize childcare for non-students " is unfounded. Any parent who is not a student at ECC is required to pay tuition at the Erie County approved childcare market rates as published in the Tuition and Fee Schedule for ASC Childcare. Tuition discounts (supported by the student activity fees) are allocated exclusively to student parents. Documentation establishing that tuition discounts are strictly limited to student parents was provided to the auditor.

See Note 4 Page 51

Page 24, paragraph 4, Page 25, paragraph 2, Page 29, Recommendations 20, 21, 22:

The ASC annual fulfillment of contractual obligations for Capital Contributions and Year –End Cash Balances are documented in the ASC Board minutes as well as the annual ASC audit conducted by an Independent Auditing firm. The ASC annual Audit and Management Letter are included on the ECC Board of Trustees' Meeting Agenda with an overview provided and questions addressed by the ASC President as requested. The ASC will begin providing a separate summary report of Capital Contributions fulfilled and Year-End Cash Balances annually to the ECC Board of Trustees to more clearly document fulfillment of contractual obligations.

The Auxiliary Services Corporation welcomes the recommendations that will assist us in providing support services to the ECC community, in addition to improving our communications with the ECC Board of Trustees.

Respectfully,

Susan Holdaway
Executive Director, Auxiliary Services Corporation of ECC

cc: William Reuter, President Auxiliary Services Corporation of ECC

APPENDIX B

OSC COMMENTS ON THE COLLEGE'S RESPONSE

Note 1

The audit team made several attempts to contact Board members during the audit process. However, the College designated an audit liaison who was unwilling to provide the audit team with phone numbers for the Board members. She later provided us with the Board Chairperson's phone number, but he did not return our call. Another College official provided us with a different Board member's phone number, whom the audit team was able to contact. The audit team also notified Board members in writing that the audit team was onsite conducting audit work and provided Board members with the audit manager's pertinent contact information.

Note 2

The President and appropriate members of the College's senior executive staff were kept informed throughout the course of the audit. The audit team met with these officials on multiple occasions to explain the audit scope, objectives and findings. We made several attempts to contact Board members and we encouraged College officials to provide the Board with periodic updates. As such, had the Board taken a more proactive role, it would have been aware of audit's findings in a more timely manner.

Note 3

In September 2010, there were 17 senior executive positions on the payroll. In February 2015, there were 26 senior executive positions on the payroll, resulting in an increase of nine positions. During this time, 10 senior executive positions were created and one was eliminated. We updated the report to clarify the issue.

Note 4

Although faculty members are required to pay a market rate for childcare services, this rate is not based on the costs to provide the childcare services. Therefore, there is still a risk that student activity fees could be used to subsidize childcare costs for faculty members.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to assess Board oversight and management of College resources for the period September 1, 2013 through July 2, 2015. To accomplish the objective of our audit and obtain valid audit evidence, our procedures included the following:

Executive Salaries and Benefits

- We reviewed relevant laws or regulations pertaining to the duties and powers of the Board and President as it pertains to appointments, salaries and benefits.

- We interviewed officials and employees to gain an understanding of the College's applicable payroll and personnel policies and procedures (e.g., creating new positions, appointments, recruitment, hiring).

- We analyzed changes in headcount and payroll costs in comparison with enrollment trends over the past five fiscal years.

- We reviewed payroll registers and employee earnings reports to determine the total amount of compensation paid to all senior executives including base salary, pay increases, salary adjustments, stipends and longevity during the period September 1, 2013 through February 20, 2015. We extended our scope back to September 1, 2010 to verify base salaries of newly hired executives and to quantify cumulative pay increases and stipends paid to senior executives.

- We reviewed Board personnel agendas and minutes to determine whether the salary and benefits were accurate, supported and Board-approved.

- We compared benefits provided to senior executives to collective bargaining agreements, individual employee contracts and Board minutes to ensure that executives only received benefits to which they were entitled.

- We reviewed time sheets, leave accrual records and other appropriate supporting documentation for all senior executives during the period September 1, 2013 through February 20, 2015 to verify that these employees were accruing leave time per contract agreements and/or applicable collective bargaining agreements, and to ensure leave records were accurate and updated in a timely fashion.

- We reviewed Board personnel agendas and employee listings with job titles for the past five fiscal years to identify all newly created senior executive positions/titles and verify that all new positions were created in a transparent manner and in compliance with applicable Board policies.

Procurement

- We reviewed Board-adopted policies regarding the procurement of professional or contractual services.

- We interviewed College officials and employees regarding policies and procedures for procuring professional services.

- We selected 16 professional service vendors with contracts or payments during 2013-14 and 2014-15 with cumulative payments exceeding $10,000, the threshold established by Board policy for seeking competition. The sample selection was judgmental based on payment amounts, vendor names and service descriptions, and included identifying “split payments” that would meet the threshold if aggregated.

- We reviewed procurement documentation and interviewed appropriate officials to determine if services were procured in compliance with Board policies.

- We reviewed professional service documentation on file, interviewed appropriate officials and reviewed Board minutes to determine if the College entered into written contracts with the service provider. If no written contract was on file, we reviewed Board minutes and interviewed officials to determine how the basis for compensation and services to be rendered was determined and documented.

- We reviewed all invoices and supporting documentation on file to ensure payments were properly supported, contained sufficient evidence that the services were rendered and were made in accordance with written contracts if applicable.

- We compared prices paid for services procured through State contracts to State contract prices to ensure the College paid the appropriate rates.

Affiliated Entities

- We reviewed the affiliated entities’ constitution, bylaws and articles of incorporation to obtain key background information including organization, stated purpose and operational structure.

- We reviewed written contracts between the College and its affiliated entities and identified pertinent terms regarding basis for compensation, services to be rendered and contractual reporting requirements.

- We requested that the College and its affiliated entities provide documentation to demonstrate that each party is fulfilling their service and support provisions of the agreement.

- We interviewed officials and employees of the College, Foundation and ASC to determine what information or reports the College Board receives to monitor the organization’s compliance with and fulfillment of the terms of agreement.

- We reviewed the audited financial statements, which were the only financial reports provided to the Board, to determine if the information was adequate for monitoring the affiliated entities and ensuring contract compliance.

- We reviewed federal tax exempt forms that the Foundation filed with the Internal Revenue Service and identified reportable gifts and donations received on the College's behalf.

- We reviewed cash disbursement files, such as general ledger detail and vendor history reports, to identify all payments to affiliated entities.

- We reviewed all payments to affiliated entities to ensure payments were made in accordance with contract stipulations and/or in compliance with applicable policies, rules, regulations and laws.

- We reviewed payroll records including earning summaries, expenditure detail reports and personnel file records to document all payroll salary and benefits provided for Foundation employees or officers.

- We interviewed officials and employees of the College, Foundation and ASC to determine what direct and indirect financial support (facilities, utilities, supplies, etc.) the College provides to the organizations.

- We reviewed audited financial statements for the College, Foundation and ASC to identify direct and indirect financial support provided by the College and compared this information with College financial records. For all sources of financial support identified, we verified whether the support was appropriate based on contracts, articles of incorporation, applicable policies, rules, regulations and laws.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

APPENDIX D

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