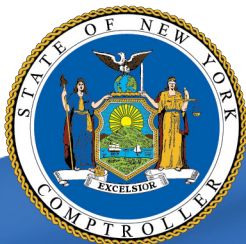


Whitesboro Central School District

Separation Payments

MARCH 2021



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

Whitesboro Central School District

Audit Objective

Assess whether separation payments to certain Whitesboro Central School District (District) employees were properly supported and accurately calculated in accordance with Board-approved agreements.

Key Findings

Separation payments made to seven of 10 employees tested were generally supported and accurately calculated. However, we question payments to three employees totaling \$108,963. District officials:

- Paid two former administrators separation payments totaling \$66,368 that were not supported by their individual employment contracts and were based on a Board resolution adopted over 20 years before their contracts were approved.
- Allowed a former assistant principal to retire early and receive a \$42,595 separation payment and post-employment health benefits that he otherwise would not have been eligible for based on the collective bargaining agreement (CBA).

Key Recommendations

- Periodically review and update individual employment contracts to ensure they reflect all compensation and benefits employees are authorized to receive.
- Ensure that separation payments are accurately calculated, supported and disbursed in accordance with the terms of CBAs and individual employment contracts.

District officials generally agreed with our recommendations and initiated or plan to initiate corrective action. Appendix B includes our comment on an issue raised in the District's response letter.

Background

The District is located in the Towns of Whitestown, Deerfield, Marcy and Trenton in Oneida County and the Town of Schuyler in Herkimer County. The District is governed by an elected seven-member Board of Education (Board).

The Superintendent of Schools (Superintendent) is the District's chief executive officer and is responsible, along with other administrative staff, for the District's day-to-day management under the Board's direction. The Assistant Superintendent for Business (Assistant Superintendent) oversees all functions of the Business Office, including making separation payments. A payroll clerk processes all separation payments and the Treasurer reviews the calculations before payment.

Quick Facts

For the Audit Period

Separation Payments	\$301,741
Employees Who Received Payments	23
2019-20 Appropriations	\$70.3 million
Students	3,142
Employees	543

Audit Period

July 1, 2018 – February 29, 2020

Separation Payments

In addition to established wages and salaries, school districts generally have the authority to make cash payments of the monetary value for all or a portion of an officer's or employee's earned but unused accrued leave when they leave school district employment. A school district may also establish, typically pursuant to a CBA, retirement incentives to officers or employees that meet certain specified requirements (e.g., lump sum payments based on years of service).

Separation payments and retirement incentives commonly referred to as separation payments can represent significant expenditures for a school district. In the absence of a preexisting local enactment or agreement, courts have found that the local government should not make such payments.

How Should Separation Payments Be Made?

Generally the authority to make separation payments is pursuant to a CBA, individual employment contract, or, in some circumstances, pursuant to a preexisting local enactment (e.g., board resolution). District officials should establish procedures to ensure officers or employees receiving such payments are paid the amounts to which they are entitled to and that each payment is accurate, adequately supported and authorized pursuant to a board-approved CBA, employment contract or, in some circumstances, board resolution.

Adequate supporting documentation, such as accrued leave balance reports and employee contracts, should be attached to payment calculations. The amounts should be independently reviewed and approved before payments are made to officers or employees to help ensure the payments are accurately calculated.

Officials Paid Separation Payments Not Supported by Contracts

During our audit period, the District had three CBAs and 11 individual employment contracts that stipulated the terms and benefits for all employees, including provisions related to separation payments. The District had 62 employees who either retired or left District employment during our audit period, 23 of whom received some form of separation payments totaling \$301,741.

We reviewed separation payments made to 10 employees totaling \$252,327 to determine whether such payments were correctly calculated, adequately supported and made in accordance with CBAs or employment contracts. While payments made to seven employees generally conformed to written agreements, we question the separation payments totaling \$108,963 made to three former Administrators (i.e., a former Assistant Superintendent, a former Director of Guidance¹ and a former Assistant Principal).

¹ Official title for the position was Director of Guidance, Counseling and Pupil Services

Payments to Administrators with Individual Employment Contracts – Two former administrators received separation payments for unused sick leave and retirement incentives totaling \$78,223, which was \$66,368 more than the amounts specified by their individual employment contracts (Figure 1). In the absence of specific authorization in their individual employment contracts, we question the appropriateness of these payments.

Figure 1: Questionable Separation Payments

Employee	Separation Payment Benefit	Allowed by Employment Contracts	Paid by District	Difference
Former Assistant Superintendent	Unused Sick Leave	\$5,310	\$7,203	\$1,893
	Retirement Incentive	0	33,784	33,784
	Subtotal	\$5,310	\$40,987	\$35,677
Former Director of Guidance	Unused Sick Leave	\$6,545	\$8,746	\$2,201
	Retirement Incentive	0	28,490	28,490
	Subtotal	\$6,545	\$37,236	\$30,691
Grand Totals		\$11,855	\$78,223	\$66,368

The former Assistant Superintendent retired from the District on August 31, 2018. In accordance with his individual employment contract dated June 2008, he received a separation payment, totaling \$5,310 for unused sick leave in October of 2018. On October 31, 2018 the former Assistant Superintendent notified the payroll clerk, by email, that the separation payment he received for unused sick leave was not calculated pursuant to the rates in the Whitesboro Administrators' Organization CBA (WAO CBA). According to the email, the calculation for his unused sick leave payment should have been higher.

In addition, the email included a calculation for what appears to be a retirement incentive payment. The calculation for the additional sick leave payout and retirement incentive were based on a July 5, 1983 Board resolution, which extended WAO CBA benefits to central office administrators and supervisors.²

The Superintendent subsequently approved the additional separation payment benefits, totaling \$35,677, which included \$33,784 for a retirement incentive and \$1,893 for the additional unpaid sick leave. Also, the former Director of Guidance, who retired from the District on August 31, 2019, received a separation payout totaling \$37,236, which included \$28,490 for a retirement incentive and \$8,746 for unused sick leave. Based on the terms of her individual employment contract dated December 2003, she was entitled only to a sick leave payout of \$6,545.

In the absence of specific authorization in their individual employment contracts, we question the appropriateness of these payments [\$66,368].

² Under the WAO CBA, central office administrators were not part of the bargaining unit.

Moreover, her individual employment contract did not include any provision for a retirement incentive when leaving District employment. However, similar to the separation payment made to the former Assistant Superintendent, the District paid the former Director of Guidance a retirement incentive and sick leave payout based on the WAO CBA. The Superintendent told us the District did not consult with legal counsel to ensure the additional separation payments were proper and should be paid.

Under these circumstances, we question the appropriateness of these additional payments (i.e., additional sick leave and retirement incentive payments) given the fact that such benefits were not provided for in each of these individual's employment contracts. While it appears such payments were based on the District's reliance of the 1983 resolution, there was no written indication that this resolution was to apply to individual employment contracts.

As such, if the intent of the District was to extend the additional benefits, from the WAO CBA to central office administrators, it is unclear why these benefits were not written into the employment contracts, which were executed more than 20 years after the Board's resolution.

Moreover, the individual employment contracts stated that the terms and conditions would be reviewed by the Board every two years. However, the most current contracts provided to us for these administrators were dated 2003 and 2008. The current Board president, who has been on the Board since 2009, told us he did not recall the Board ever reviewing or updating the employment contracts for these two administrators.

Because the Board did not periodically review the individual employment contracts, it is unclear whether Board members were aware of the benefits provided in the contracts or that the administrators received additional benefits beyond the contract terms – both during and when leaving District employment. The District generally provided these administrators the more generous benefits offered in either the WAO CBA or the individual employment contracts (Figure 2).

Figure 2: Benefits Provided to the Former Administrators

Benefit	WAO CBA	Individual Employment Contracts	Benefits Paid In Accordance With	
			WAO CBA	Individual Employment Contracts
Longevity Pay^a	Provided	Not provided	✓	
Retirement Incentive	Provided	Not provided	✓	
Sick Leave Payout Daily Rates at Retirement^b	\$25/\$30/\$50	\$13/\$27/\$40	✓	
Life Insurance coverage	\$100,000	\$40,000	✓	
Health Insurance Employer Contribution (Active Employment/Retirement)^c	85%/85%	100%/95%		✓
Personal Leave Rollover to Sick Leave^d	3 Days ^e	5 Days		✓

a The former Assistant Superintendent received longevity payments over the course of employment totaling \$11,750 and the former Director of Guidance received \$14,500 in longevity payments over the course of employment.

b The WAO CBA authorized a sick leave payout of \$25 each day for the first 113 accumulated sick days, \$30 each day for accumulated days above 113 (not exceeding 226 days), and \$50 each day for all accumulated sick days above 227 days. Employment contracts authorized a sick leave payout of \$13 each day for the first 113 accumulated sick days, \$27 each day for accumulated days above 113 (not exceeding 226 days), and \$40 each day for all accumulated sick days above 226 days.

c The WAO CBA authorized employer contribution rate was 85 percent for both individual and family coverages. Upon retirement, the rate of contribution was the same as the rate during active employment. Employment contracts provided the same health insurance protection as is provided for members of the WAO CBA with an employer contribution of 100 percent for individual and family coverage. Upon retirement, the rate of contribution was 95 percent.

d The individual employment contracts for both former administrators provided that any personal leave days not used in a particular year accrue as sick leave days effective July 1 of the following year.

e Effective July 1, 2014. Before that date, the WAO CBA did not provide for a rollover of personal days to sick leave.

When the District provides benefits that are not supported by the individual employment contracts ... employees may be paid benefits to which they are not entitled or the Board did not intend to provide.

When the District provides benefits that are not supported by the individual employment contracts, it undermines the transparency of financial operations and increases the risk that employees may be paid benefits to which they are not entitled or the Board did not intend to provide.

After these two former administrators retired, the Board took steps to clarify the benefits provided to administrators who are not part of the WAO bargaining unit. In September 2019 (before our audit), the Board amended the benefits in individual employment contracts for 10 administrative positions and rescinded the 1983 Board resolution that automatically extended WAO CBA benefits to central office administrators and supervisors.

Payment to an Administrator Covered by the WAO CBA – In August 2018, the District paid a \$42,595 separation payment to a former Assistant Principal, who did not meet the eligibility requirement for such a payment, as stated in the WAO CBA that covered his position.³

³ The separation payment included a \$39,203 retirement incentive and \$3,392 for unused sick leave.

The Superintendent and Board President told us that the former Assistant Principal sought early retirement for personal reasons that were unrelated to his work performance. The District entered into a memorandum of agreement (MOA) with the collective bargaining unit to waive certain WAO CBA provisions.

The MOA waived the requirement to work at least 10 years with the District to be eligible for a retirement incentive and payment of unused sick leave when leaving District employment and for the continuation of health insurance benefits after retirement. According to District records, the former Assistant Principal was hired on July 20, 2009 and worked just under nine years for the District before his retirement in June 2018.

According to the MOA, the parties determined that given the unique circumstances, it was in their mutual interest to enter into the agreement to provide these benefits. District officials provided us with correspondence between the Superintendent and the Board regarding granting the early retirement that indicated outside legal counsel was involved in preparing the MOA. However, we found no documentation in the Board minutes showing that the Board reviewed and approved the MOA.

While in some instances, the Board has the authority to enter into a MOA to modify certain requirements of a CBA, District officials did not demonstrate that it was in the District's best interest to waive the collective bargaining unit's agreement requirements. Additionally, we question whether this arrangement was clear and transparent to the public because the Board did not pass a resolution to approve the MOA during a public meeting.

The Superintendent told us that authorizing the early retirement resulted in a cost savings to the District. However, District officials were unable to provide any documentation showing that a cost savings analysis was completed before entering into the MOA.

During our audit, officials provided us with a comparison of the salary and benefits for the former Assistant Principal and the employee hired as his replacement that showed the District saved \$37,725 in salary and benefit costs by allowing the former Assistant Superintendent to retire about one year early. However, the analysis did not consider all factors needed to determine whether the MOA was financially beneficial to the District.

By waiving the WAO CBA requirements to allow for the early retirement, the District incurred separation payment costs totaling \$42,595 and additional costs for continuing post-retirement health insurance benefits that it otherwise would not have been required to pay. For example, the District had already paid post-employment health insurance premiums for the former Assistant Principal totaling \$15,975 as of June 30, 2020. We estimate this arrangement could cost the

District an estimated additional \$300,000 in post-employment health insurance costs (including Medicare) in the future.⁴

In addition, the MOA provides that the agreement does not establish a precedent for future requests for benefits. We question whether it is fair and equitable to deviate from the WAO CBA provisions for one member when other members covered by the agreement would not receive the same benefits.

What Do We Recommend?

The Board should:

1. Periodically review and update individual employment contracts to ensure the contracts reflect all compensation and benefits the employees are authorized to receive.
2. When appropriate and in consultation with legal counsel, approve by resolution any modifications to a CBA to help facilitate public transparency.

District officials should:

3. Ensure that separation payments are accurately calculated, supported and disbursed in accordance with the terms of CBAs, individual employment contracts or MOAs authorized by the Board.
4. Consult with legal counsel as to seeking recovery of payments identified in this report that are inconsistent with the individual employment contracts.

⁴ Based on the average increase in the District's health insurance premiums and the average life expectancy of a male in the United States. The District's average annual increase in health insurance premium costs from 2018-19 through 2020-21 was 4.8 percent. We used a more conservative estimate of 4 percent for our analysis. The average life expectancy is based on the Life Expectancy calculator available on the Social Security Administration's website (www.ssa.gov).

Appendix A: Response From District Officials

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January 12, 2021

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Unit Name: Whitesboro Central School District
Audit Report Title: Separation Payments
Audit Report Number: 2020M-146

With the approval of the Board of Education, District Superintendent, and the Audit and Finance Committee, please find this letter as our Audit Response and Corrective Action Plan (CAP) to the Separation Payments Report which was provided to the District on January 11, 2021.

For each finding and recommendation noted in your report, the following is the District's response and should also be accepted as our corrective action(s), which have already been taken.

Key Finding:

“Paid two former administrators separation payments totaling \$66,368 that were not supported by their individual employment contracts and were based on a Board resolution adopted over 20 years before their contracts were approved.”

District Response / CAP:

As noted in your report, there was a Board Resolution which was approved on July 5, 1983, which extended WAO CBA benefits to Central Office Administrators and supervisors. This Resolution was still in effect at the time the two identified administrators retired, thus allowing both employees to receive the benefits as

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outlined in said Resolution. The Board of Education was aware of this Resolution and based upon the recommendation of the Superintendent, rescinded this Resolution on September 10, 2019, which pre-dates the start date of this audit.

Key Finding:

“Allowed a former assistant principal to retire early and receive a \$42,595 separation payment and post-employment health benefits that he otherwise would not have been eligible for based on the collective bargaining agreement (CBA).”

District Response / CAP:

As noted in your report, the decision to offer the Administrator a retirement MOA, was made in the best interest of the District. The separation agreement allowed the identified employee to retire one year early and was based on legal review and at the recommendation and approval of the Board of Education, District Superintendent, Administration, and the Whitesboro Administrators’ Organization. Should the identified employee not have accepted the proposed MOA, he would have completed one more year of employment with the District and been eligible for the same separation and post-employment benefits. For this reason, the District disagrees with the report claim that this agreement could result in an additional \$300,000 in costs over the following 21 years. As noted in your report, the District provided information that identified a \$37,725 year-one savings to the District when comparing salary and benefit costs of the retiring administrator and his replacement.

See Note 1 Page 11

Audit Recommendation:

The Board should:

1. Periodically review and update individual employment contracts to ensure the contracts reflect all compensation and benefits the employees are authorized to receive.
2. When appropriate and in consultation with legal counsel, approve by resolution any modifications to a CBA to help facilitate public transparency.

Action by the Board of Education

1. Beginning in 2019, prior to this audit, the Board began reviewing all individual employment contracts annually.
2. The Board of Education will continue to seek legal counsel as it relates to modifications to all CBAs and to promote public transparency.

District officials should:

3. Ensure that separation payments are accurately calculated, supported and disbursed in accordance with the terms of CBAs, individual employment contracts or MOAs authorized by the Board.
4. Consult with legal counsel as to seeking recovery of payments identified in this report that are inconsistent with the individual employment contracts.

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Action by District Officials

3. The District will continue to take proactive measures to ensure employee separation payments are accurate and in compliance with employee contracts or MOAs. A continual review of this process is evident in the 2019 revised procedures surrounding the calculating and vetting of separation payments.
4. The actions and separation payments made by the District are believed to be legal, consistent with written guidance, and made with the best interest of the District in mind. Based on legal counsel, the District will not be seeking the return of any payments made, as the District does not believe that any illegal or inappropriate payments were made. The District will continue to seek legal counsel as it relates to employment contracts.

Implementation Date:

As noted above, the District has taken numerous actions over the past two years to improve procedures, implement efficiencies, and promote transparency. The District will continue to do the same.

Person Responsible for Implementation:

Joseph T. Muller II

Assistant Superintendent for Business

Joseph T. Muller II
Assistant Superintendent for Business

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Appendix B: OSC Comment on the District's Response

Note 1

We found no indication that the Board authorized the MOA and our report does not conclude that the decision to offer the Administrator a retirement MOA was made in the best interest of the District. Our report states the District's position on this matter – "...the parties determined that given the unique circumstances, it was in their mutual interest to enter into the agreement to provide these benefits."

Further, it is uncertain whether the employee would have worked an additional year had the District not offered the MOA. We estimated the additional costs based on two known factors – the employee's retirement date and his lack of eligibility for the separation payment and post-employment health benefits – as provided in the WAO CBA.

Appendix C: Audit Methodology and Standards

We conducted this audit 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. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed District officials and staff to gain an understanding of the calculation, approval and disbursement process for separation payments.
- We reviewed all Board-approved CBAs, individual employment contracts and MOAs to determine the terms authorizing separation payments.
- We reviewed the meeting minutes containing the Board resolution dated July 5, 1983.
- We identified all employees who left District employment during our audit period and who received a separation payment by reviewing Board minutes and a listing provided by the payroll clerk. We identified 62 employees who left the District, 23 of which received separation payments totaling \$301,741.
- We examined the supporting records for a sample of 10 separation payments totaling \$252,327 during the audit period to determine whether they were supported and accurately calculated in accordance with the terms and conditions of Board-approved CBAs, individual employment contracts, or MOAs. We used our professional judgement to select all separations payments for review that were greater than \$10,000. When applicable, we recalculated final accrued unused leave balances by reviewing accrued leave schedules in CBAs and individual employment contracts, and leave usage on time sheets.
- We traced our sample of separation payments reviewed to electronic cash disbursement data (for 403b payments) or payroll data from the computerized accounting systems to bank ACH withdrawals or cleared check images.

We conducted this performance audit in accordance with generally accepted government auditing standards (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.

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.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law, Section 2116-a (3)(c) of New York State Education Law and Section 170.12 of the Regulations of the Commissioner of Education. To the extent practicable, implementation of the CAP must begin by the end of the next fiscal year. 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. The CAP should be posted on the District's website for public review.

Appendix D: Resources and Services

Regional Office Directory

www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2018-12/regional_directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263196&issued=All

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263206&issued=All

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2020-05/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263211&issued=All

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/local-government/academy

Contact

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